The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §§335.2 and 335.6.

Background and Summary of the Factual Basis for the Proposed Rules

TCEQ is proposing to amend 30 Texas Administrative Code (TAC) Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste) to implement House Bill (HB) 692, 88th Texas Legislature, which added §26.0481 to Chapter 26, Subchapter B of the Texas Water Code (TWC) and §361.1215 to Chapter 361, Subchapter C of the Texas Health and Safety Code (THSC). The bill directs TCEQ to: 1) issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application (THSC §361.1215); 2) adopt rules allowing the disposal of dairy waste from dairy operations either permitted as a concentrated animal feeding operation (CAFO) or unpermitted animal feeding operation (AFO) into a retention control structure (RCS), including a lagoon or playa (TWC §26.0481(b)(1)); and, 3) authorize land application by irrigation associated with that disposal (TWC §26.0481(b)(2)). Proposed amendments in 30 TAC Chapter 321 (Control of Certain Activities by Rule) prescribe the standards for land application of dairy waste under emergency conditions as further described in the preamble *Background and Summary of the Factual Basis for the Proposed Rules* for Chapter 321 amendments.

Dairy waste from CAFOs and AFOs is considered industrial waste in Texas, and land application or disposal of dairy waste would be subject to a permit under §335.2 or notification under §335.6. The proposed amendment of §335.2 would exempt land

application or disposal of dairy waste under emergency conditions in compliance with Chapter 321 from the permitting requirements of Chapter 335. The proposed amendment of §335.6 would exempt land application activities conducted during emergency conditions and in compliance with Chapter 321 from Chapter 335 notification requirements. Although the land application or disposal of dairy waste in compliance with Chapter 321 would not be subject to permitting or notification requirements under Chapter 335, land used for disposing of solid waste, including dairy waste, would be a solid waste facility under THSC §361.003(36).

As part of this rulemaking, the commission is also proposing amendments of 30 TAC Chapter 321 (Control of Certain Activities by Rule) concurrently in this issue of the *Texas Register*.

Section by Section Discussion

Proposed amended §335.2, *Permit Required*, would add paragraph (d)(10) to exempt from permitting under Chapter 335 the land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321.

Proposed amended §335.6, *Notification Requirements*, would add subsection (n) to exempt land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321 from the notification requirements of §335.6.

Fiscal Note: Costs to State and Local Government

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

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit from this rulemaking and concurrent rulemaking proposed in Chapter 321 will be rules that are consistent with state law, specifically HB 692 from the 88th Regular Legislative Session (2023). The proposed rulemaking would benefit entities disposing of or land applying dairy waste during emergency conditions by exempting such entities under these circumstances from permitting or notification requirements in §§335.2 or 335.6 if they are compliant with the rulemaking proposed in Chapter 321. Specifically, changes to §335.2 could benefit entities that are or otherwise would be permitted to dispose of or land apply dairy waste and changes to §335.6 could benefit persons disposing of or land applying dairy waste that are not required to be permitted.

Local Employment Impact Statement

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

proposed rule is in effect.

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a

government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

TCEQ reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC) §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not meet the definition of a "Major environmental rule" as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The 88th Texas Legislature enacted HB 692, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), and THSC, Chapter 361 (the Solid Waste Disposal Act), Subchapter C (Permits) by adding §26.0481 to the TWC and §361.1215 of the THSC, which provides an additional regulatory and legal method for dairy AFOs to dispose of dairy waste, which HB 692 defines as milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation or at a CAFO, as applicable.

HB 692 required TCEQ to adopt new rules to implement HB 692's provisions.

HB 692 grants TCEQ rulemaking authority to create an authorization by rule for land application of dairy waste, and to adopt new rules allowing the disposal of dairy waste from a CAFO into an RCS, including a lagoon or playa, and authorize land application by irrigation associated with that disposal. The TCEQ has proposed revisions to 30 TAC Chapter 321 to implement the new requirements for land application or disposal of dairy waste.

The proposed amendments in Chapter 335 implement HB 692 by subjecting the requirements for land application or disposal of dairy waste to the requirements of

Chapter 321 and not the permitting or notification requirements of Chapter 335. Dairy waste is considered industrial waste in Texas, and land application or disposal of dairy waste would be subject to a permit under §335.2 or notification under §335.6. The proposed amendment of §335.2 would exempt land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321 from the permitting requirements of Chapter 335. The proposed amendment of §335.6 would exempt land application activities conducted during emergency conditions and in compliance with Chapter 321 from Chapter 335 notification requirements. Although the land application or disposal of dairy waste in compliance with Chapter 321 would not be subject to permitting or notification requirements under Chapter 335, land used for disposing of solid waste, including dairy waste, would be a solid waste facility under THSC §361.003(36).

Therefore, the specific intent of the proposed rulemaking is related to expanding the regulatory options for land application or disposal of dairy waste, as defined in HB 692.

The proposed rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the TGC, §2001.0225 definition

of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, does not come under a delegation agreement or contract with a federal program, and finally, is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under a specific state statute enacted in HB 692 of the 2023 Texas legislative session and implements existing state law. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

TCEQ evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to implement the legislative amendments to the THSC and the TWC in HB 692 by revising TCEQ's rules in Chapter 321 to establish requirements for land application or disposal of dairy waste. The proposed rulemaking will substantially advance this stated purpose by adopting new rule language in Chapter 335 that exempts from permitting or notification under Chapter 335 for certain land applications and disposal of dairy waste in compliance with Chapter 321.

Promulgation and enforcement of the proposed rules will not be a statutory or

constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the proposed rules is to implement HB 692 by providing for the authorization for certain land applications and disposal of dairy waste. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will not cause a taking TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rulemaking includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rules include that discharges must comply with water quality-based effluent limits; and that discharges which increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development.

The proposed rulemaking is consistent with the above goals and policies by requiring dairy waste disposal activities to be conducted in a manner that is protective of water quality and prohibits the discharge of dairy waste into water in the state.

Promulgation and enforcement of the rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules would be consistent with these CMP goals and policies, and the rule would not create or have a direct or significant adverse effect on any CNRAs.

Written comments on the consistency of this rulemaking with CMP goals and policies may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Announcement of Hearing

In addition to comments on any other aspect of the proposed rules, the commission invites public comment on the proposal to authorize the dairy waste management activities only under emergency conditions, without Texas Health and Safety Code, §361.1215 and Texas Water Code, §26.0481 expressly stating that they apply only in such situations.

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on Monday, March 31, 2025, at 10:00 a.m. in Building A, Room 173 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, March 27, 2025. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, March 28, 2025, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://events.teams.microsoft.com/event/a31122f6-2c36-4071-8e00-3a262e1c584f@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

A Spanish translation of this notice is available at: *https://www.tceq.texas.gov/rules/hearings.html*. If you need additional translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via TCEQ Public Comments system. All comments should reference Rule Project Number 2023-139-321-OW. The comment period closes on

March 31, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Dr. Joy Alabi, Water Quality Division, at (512) 239-1318.

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

§§335.2, 335.6

Statutory Authority

The amended sections are proposed under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

The commission proposes these amendments under 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, and THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

The proposed amended sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, 26.121, 26.0481, and THSC, §361.1215.

§335.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid

waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Texas Department of State Health Services (DSHS), or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

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

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the

application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §§6901 *et seq.,* that render the facilities subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific

Types of Facilities); or 30 days after the date they first become subject to the standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

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

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

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

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

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

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the federal Clean Waste Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

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

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

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities; or [.]

(10) the land application, as defined in §321.405 of this title (relating to Definitions), or the disposal of dairy waste, as defined in §321.48 of this title (relating to Land Application of Dairy Waste), under emergency conditions, as defined in §321.48 of this title, in compliance with Chapter 321 of this title (relating to Control of Certain Activities by Rule).

(e) No permit shall be required for the on-site storage of hazardous waste by a person who meets the conditions for exemption for a very small quantity generator in 40 CFR §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d) as adopted under §335.504 of this title (relating to Hazardous Waste Determination).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(e) and (f) as adopted under §335.504 of this title.

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

director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

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

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

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

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

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

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

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

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

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

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

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

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

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

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

(p) No permit under this chapter shall be required for a reverse distributor accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in §335.751 of this title (relating to Definitions) in compliance with Subchapter W of this chapter (relating to Management Standards for Hazardous Waste Pharmaceuticals). Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals in compliance with Subchapter W of this chapter shall notify the executive director in accordance with §335.6 of this title.

§335.6. Notification Requirements.

(a) Notification of industrial solid waste and municipal hazardous waste activities not authorized by a permit. Any person who intends to store, process, recycle, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director using a method approved by the executive director, that storage, processing, recycling, or disposal activities are planned.

(1) A person required to notify of activities under this subsection shall notify at least 90 days before conducting an activity under this subsection.

(2) A person required to notify under this section shall submit additional information, upon request, to the executive director to demonstrate that storage, processing, recycling, or disposal is compliant with the terms of this chapter, including but not limited to information listed under subsection (b)(3) of this section.

(b) Duty to notify of changed and new information. Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall promptly notify the executive director using a method approved by the executive director of:

(1) any new information concerning storage, processing, and disposal described in paragraph (3) of this subsection; and

(2) any changes to information previously submitted or reported under subsection (a) of this section:

(A) authorized in any permit issued by the commission; or

(B) submitted or reported to the commission in any application filed with the commission.

(3) Information concerning storage, processing, and disposal required to be submitted under this subsection includes and is not limited to:

(A) waste composition;

(B) waste management methods;

(C) facility engineering plans and specifications; and

(D) the geology where the facility is located.

(4) A person who notifies the executive director under this section shall immediately document and notify the executive director within 90 days of changes in information previously provided and additional information that was not provided.

(c) Generator registration.

(1) Any person, by site, that generates in any calendar month more than 100 kilograms of non-acute hazardous waste, more than 1 kilogram of acute hazardous waste, or more than 100 kilograms of industrial Class 1 waste shall register in a method approved by the executive director.

(2) Large quantity generators must meet the requirements of this subsection using the electronic interface provided by the executive director unless:

(A) the executive director has granted a written request to use paper forms or an alternative notification method; or

(B) the software does not have features capable of meeting the requirements.

(3) Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual

Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste).

(4) If waste is recycled on-site or managed pursuant to §335.2(d)(1) - (4) or (6) - (9) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section.

(5) The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(A) a description of the waste including:

(i) a description of the process generating the waste; and

(ii) the composition of the waste;

(B) a hazardous waste determination in accordance with §335.504 of this title (relating to Hazardous Waste Determination), which includes the appropriate United States Environmental Protection Agency (EPA) hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261;

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

(i) whether the waste is managed on-site and/or off-site;

(ii) a description of the type and use of each on-site waste management facility unit;

(iii) a listing of the wastes managed in each unit; and

(iv) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.

(d) Transporter registration. Any person who transports hazardous waste or industrial Class 1 waste shall notify the executive director of such activity by registering using a method approved by the executive director. A person, by site, that generates in any calendar month less than 100 kilograms of non-acute hazardous waste, less than 1 kilogram of acute hazardous waste, and less than 100 kilograms of industrial Class 1 waste and only transports their own waste is not required to comply with this subsection.

(e) Transfer facility registration. A person that intends to operate a transfer

facility in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity by registering using a method approved by the executive director.

(f) Waste analysis. Any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste shall provide the chemical analysis of the solid waste performed in accordance with Subchapter R of this chapter (relating to Waste Classification) to the executive director upon written request.

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

(h) Notification of recycling activities. Any person who intends to ship off-site or transfer to another person for recycling, or who conducts or intends to conduct the recycling of, industrial solid waste, municipal hazardous waste, recyclable materials, or nonhazardous recyclable materials as defined in §335.24 of this title or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or

Subchapter H of this chapter shall notify the executive director using a method approved by the executive director.

(1) A person that is required to notify under this subsection shall include, at a minimum, the following information:

(A) the type(s), classification(s), Texas waste code(s) and EPA hazardous waste number(s) described in 40 CFR Part 261, if any, of each industrial solid waste and municipal hazardous waste intended to be recycled;

(B) the method of storage prior to recycling; and

(C) the nature of the recycling activity.

(2) A person required to notify the executive director of the intent to recycle under this subsection may begin recycling activities 90 days after submitting notification of intent to recycle under this subsection if the executive director has not requested additional information in response to the notification or upon receipt of an acknowledgment from the executive director.

(i) Notification of operating under the small quantity burner exemption. The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA

and to the executive director indicating the following:

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

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

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

(j) Notification of used oil activities. Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), used oil generated by a very small quantity generator, and household used oil after collection that will be recycled shall notify in accordance with Chapter 324 of this title (relating to Used Oil).

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

subsections (a) and (b) of this section.

(l) Healthcare facilities notification. A person required to notify the executive director under §335.755 of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals) shall notify using a method approved by the executive director.

(m) Reverse distributor registration. A person required to notify the executive director under §335.771 of this title (relating to Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors) shall register using a method approved by the executive director.

(n) Notification exemption for land application or disposal of dairy waste under emergency conditions. A person land applying, as the term land application is defined in §321.405 of this title (relating to Definitions), or disposing of dairy waste, as defined in §321.48 of this title (relating to Land Application of Dairy Waste), under emergency conditions, as defined in §321.48 of this title, in compliance with Chapter 321, of this title (relating to Control of Certain Activities by Rule) is exempt from the notification requirements of this section.