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FINAL

ADDENDUM TO THE

EPA-APPROVED TEXAS REGULATORY REQUIREMENTS APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM, DECEMBER 1997

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12th Floor
First Interstate Bank Tower at Fountain Place
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
Phone 214-665-6444

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On **September 14, 1999,** EPA published a Federal Register document announcing its decision to incorporate by reference, at 272.2201(b), Texas' authorized hazardous waste program **(64 FR 49673).** However, sections 335.2(c), 335.6(a), 335.6(c) introductory paragraph, 335.6(g), 335.10(b)(22), 335.24(b) introductory paragraph, 335.24(c) introductory paragraph, 335.41(c), 335.45(b), 335.204(a)(1), 335.204(b)(1), 335.204(b)(6), 335.204(c)(1), 335.204(d)(1), and 335.204(e)(6) of the Texas Administrative Code (TAC), Title 30, as amended, effective January 1, 1997, while incorporated by reference into the Federal regulations effective **November 15, 1999,** include State amendments that have not been reviewed or approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. This document gives notice that notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at §272.2201(b)(1), EPA will only enforce the State provisions actually authorized by EPA. The document contains the actual authorized text of the regulatory language at the citations listed above that EPA will enforce.

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The authorized version of § 335.2(c) enforceable by EPA is:

§ 335.2 Permit Required

* * * * *

(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 Texas Water 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 United States Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has been receiving waste from off-site sources 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 a 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 which satisfied this requirement by filing an application on or before November 19, 1980, with the United States Environmental Protection Agency are not required to submit a separate application with the Texas Department of Health. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing 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, Texas Health and Safety Code, Chapter 361 (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §6901 et seq., that render the facility 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 United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, 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 set forth in these subchapters, whichever first occurs. This subsection shall not apply to a facility if it has already 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 (relating to Application for Existing Facilities). 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.

* * * * *

[Texas Administrative Code, (TAC), as amended effective November 7, 1991.]

The authorized version of § 335.6(a) enforceable by EPA is:

§ 335.6 Notification Requirements

(a) A person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), or (f) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. 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 storage, processing, or disposal is compliant with the terms of this chapter. Such information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

* * * * *

[Texas Administrative Code, (TAC), as amended effective July 29, 1992.]

The authorized version of § 335.6(c) introductory paragraph enforceable by EPA is:

§ 335.6 Notification Requirements

* * * * *

(c) Any person who generates municipal hazardous waste in quantities greater than or equal to 1,000 kilograms in a calendar month or quantities of acute municipal hazardous waste in excess of quantities specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in a calendar month, or any quantities of industrial solid waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Such person shall also submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title (relating to Permit Required), 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 I

Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). Any person who notifies pursuant to this subsection shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information, to that reported previously. If waste is recycled on-site or managed pursuant to §335.2(d) of this title (relating to Permit Required), the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification shall include, but is not limited to:

* * * * *

[Texas Administrative Code, (TAC), as amended effective July 29, 1992.]

The authorized version of § 335.6(g) enforceable by EPA is:

§ 335.6 Notification Requirements

* * * * *

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

* * * * *

[Texas Administrative Code, (TAC), as amended effective July 29, 1992.]

The authorized version of § 335.10(b)(22) enforceable by EPA is:

§ 335.10 Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste

* * * * *

(b) * * *

(22) The manifest shall contain the Texas Water Commission waste classification code assigned to the waste by the state. Conditionally exempt small quantity generators of municipal hazardous waste who on any single shipment transport or offer for transport a total of less than 1,000 kilograms of hazardous waste may, provided a specific waste classification code, the number 990000. Conditionally exempt small quantity generators of municipal hazardous waste must, if they choose to use the general waste classification code 990000, also enter in Item 15 of the manifest the words, "generator qualifies as a CESQG";

* * * * *

[Texas Administrative Code, (TAC), as amended effective July 27, 1988.]

The authorized version of § 335.24(b) introductory paragraph enforceable by EPA is:

§ 335.24 Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

* * * * *

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing): Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this tide (relating to Procedures After Final Decision):

* * * * *

[Texas Administrative Code, (TAC), as amended effective March 1, 1996.]

The authorized version of § 335.24(c) introductory paragraph enforceable by EPA is:

§ 335.24 Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

* * * * *

(c) The following recyclable materials are not subject to regulation under Subchapters B-I and O of this chapter, (relating to Hazardous Waste Management-General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps and Land Disposal Restrictions), respectively, or Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final decision; and Consolidated Permits), except as provided in subsections (g) and (h) of this section:

* * * * *

[Texas Administrative Code, (TAC), as amended effective March 1, 1996.]

The authorized version of § 335.41(c) enforceable by EPA is:

§ 335.41 Purpose, Scope, and Applicability

* * * * *

(c) Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) do not apply to:

(1) the owner or operator of a publicly owned treatment works (POTW) which processes, stores, or disposes of hazardous waste; and

(2) persons disposing of hazardous waste by means of underground injection. However, Subchapter E or this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) do apply to the above ground storage or processing of hazardous waste before it is injected underground.

* * * * *

[Texas Administrative Code, (TAC), as amended effective September 1, 1986.]

The authorized version of § 335.45(b) enforceable by EPA is:

§ 335.45 Effect on Existing Facilities

* * * * *

(b) Effect on off-site facilities without a permit to reuse, recycle, or reclaim hazardous waste. Any person who has commenced the off-site storage, processing, or disposal of hazardous wastes, or activities that are listed, identified, or described by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261, on or before the effective date of statutory or regulatory amendments under the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §6901 et seq., relating to the reuse, recycling, or reclamation of hazardous waste, that render such wastes or activities subject to the requirements to have a hazardous waste permit, shall file an application with the commission on or before the effective date of such amendments, which includes the applicable information required by §335.44 of this title (relating to Application for Existing On-site Facilities). Any person who has commenced off-site storage, processing, or disposal of hazardous waste on or before the effective date of such amendments, who has filed a hazardous waste permit application with the commission on or before the effective date of such amendments in accordance with the rules and regulations of the commission, and who complies with requirements in this chapter applicable to such activities, may continue the off-site storage, processing, or disposal of the newly listed or identified wastes or waste activities until such time as the Texas Water Commission approves or denies the application. Facilities that have received

a permit for the reuse, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) are not required to comply with this subsection and may operate pursuant to their existing permit. Such permits, however, are subject to amendment under §305.62 of this title (relating to Amendment) to reflect new regulatory requirements.

* * * * *

[Texas Administrative Code, (TAC), as amended effective September 1, 1986.]

The authorized version of § 335.204(a)(1) enforceable by EPA is:

§ 335.204 Unsuitable Site Characteristics

(a) * * *

(1) A storage or processing facility (excluding storage surface impoundments) may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

* * * * *

[Texas Administrative Code, (TAC), as amended effective May 28, 1986.]

The authorized version of § 335.204(b)(1) enforceable by EPA is:

§ 335.204 Unsuitable Site Characteristics

* * * *

(b) * * *

(1) A land treatment facility may not be located in the 100-year floodplain unless it is designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood.

* * * * *

[Texas Administrative Code, (TAC), as amended effective May 28, 1986.]

The authorized version of § 335.204(b)(6) enforceable by EPA is:

§ 335.204 Unsuitable Site Characteristics

* * * * *

(b) * * *

(6) A land treatment facility may not be located within 1000 feet of an established residence, church, school, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the commission, or if no such notice is filed, at the time the permit application is filed with the commission. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the commission as of September 1, 1985.

* * * * *

[Texas Administrative Code, (TAC), as amended effective May 28, 1986.]

The authorized version of § 335.204(c)(1) enforceable by EPA is:

§ 335.204 Unsuitable Site Characteristics

* * * * *

(c) * * *

(1) A waste pile may not be located in the 100-year floodplain unless it is designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood.

* * * * *

[Texas Administrative Code, (TAC), as amended effective May 28, 1986.]

The authorized version of § 335.204(d)(1) enforceable by EPA is:

§ 335.204 Unsuitable Site Characteristics

* * * * *

(d) * * *

(1) A storage surface impoundment may not be located in the 100-year floodplain unless it is designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood.

* * * * *

[Texas Administrative Code, (TAC), as amended effective May 28, 1986.]

The authorized version of § 335.204(e)(6) enforceable by EPA is:

§ 335.204 Unsuitable Site Characteristics

* * * * *

(e) * * *

(6) A landfill may not be located within 1000 feet of an established residence, church, school, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the commission, or if no such notice is filed, at the time the permit application is filed with the commission. This provision shall not apply to a facility for which a notice of intent to file an application, or an application, has been filed with the commission as of September 1, 1985.

* * * * *

[Texas Administrative Code, (TAC), as amended effective May 28, 1986.]