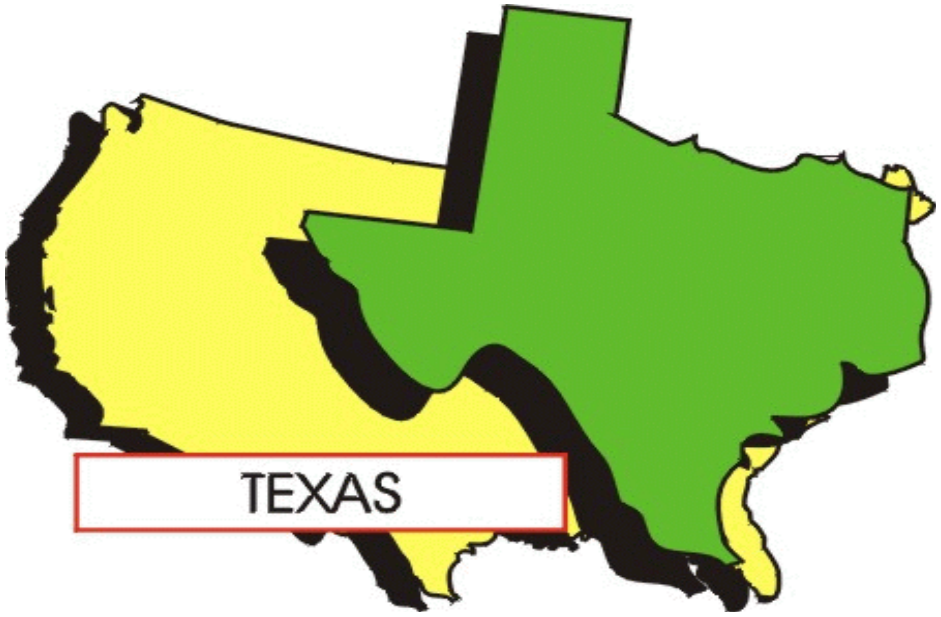
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EPA-APPROVED TEXAS STATUTORY AND REGULATORY REQUIREMENTS APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM



JUNE 2005

EPA APPROVED TEXAS STATUTORY REQUIREMENTS
APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM *
June 2005

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***** Copies of the Texas statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164-0526.

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TEXAS CODES ANNOTATED

HEALTH AND SAFETY CODE

Sections 341.001 to 400



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of the provision to the codified law. In this subsection, "transition provision" includes any temporary provision providing for a special situation during the transition period between the time of the existing law and the establishment or implementation of a new law."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1989, 71st Leg., ch. 536, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 1.

Library References

10 Texas Pl & Pr Forms, Pollution and Conservation §§197:51, 197:61.

Notes of Decisions

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1. **Validity**

Regulations of the Department of Health governing solid waste disposal facilities are not unconstitutionally vague, even though they do not contain definitions of the terms "land use" or "improper land use." Browning-Ferris, Inc. v. Texas Dept. of Health (App. 3 Dist. 1981) 625 S.W.2d 764, ref. n.r.e..

Statute provides sufficient guidelines to Department of Health and does no more than delegate to Department the authority to establish reasonable rules and regulations to carry out express purposes of this section, to safeguard health, welfare, and physical property of people, and to protect environment, which include licensing of solid waste disposal sites. Med-Safe, Inc. v. State (App. 1 Dist. 1988) 752 S.W.2d 638.

2. **In general**

Language of Solid Waste Disposal Act (SWDA) indicated that Texas Natural Resources Conservation Commission (TNRCC) had authority to regulate transportation of solid waste for environmental purposes, rather than for purposes of preserving highways or regulating trucking, and, thus, Railroad Commission was not precluded from using its regulatory powers to assure economic health of transportation industry and overall quality and safety of state highways, even if cargo being transported was solid waste. Railroad Com'n of Texas v. Waste Management of Texas, Inc. (App. 3 Dist. 1994) 880 S.W.2d 835, rehearing overruled.

Railroad Commission and Texas Natural Resources Conservation Commission (TNRCC) exercise concurrent jurisdiction over transportation of solid waste as each regulates different aspect of activity. Railroad Com'n of Texas v. Waste Management of Texas, Inc. (App. 3 Dist. 1994) 880 S.W.2d 835, rehearing overruled.

Statute and bill creating the Anderson County Underground Water Conservation District are not, on their face, in conflict. Op.Atty.Gen. 1987, No. JM-827.

§ 361.003. Definitions

Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(3) "Class I nonhazardous industrial solid waste" means any Class 1 industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection

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Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(4) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs 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, where "captured facility" means 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.

(5) "Commission" means the Texas Natural Resource Conservation Commission.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(7) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(8) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(9) "Executive director" means the executive director of the commission.

(10) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(11) "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

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(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(12) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(13) "Hazardous waste management facility" means 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.

(14) "Hazardous waste management unit" means 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.

(15) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(16) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

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(17) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(18) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

~~(19) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.~~

(20) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(21) "Notice of intent to file an application" means the notice filed under Section 361.063.

(22) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(23) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(24) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(25) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

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(26) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the commission under that law.

~~(27) "Recycling" means the legitimate use, reuse, or reclamation of solid waste.~~

(28) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law,[1] or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(29) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

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(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(30) "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(31) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(32) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the commission.

(33) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(34) This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, 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,

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and agricultural operations and from community and institutional activities. The term:

(A) 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 under Chapter 26, Water Code;

(ii) 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; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the 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 hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

~~(35) This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas.~~ Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, 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. The term:

(A) 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 under Chapter 26, Water Code;

(ii) 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; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections ~~361.271 through 361.277, 361.280, and 361.343 through 361.345.~~

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(36) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(37) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission.

(38) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

~~(39) "Pollution" means the alteration of the physical, thermal, chemical, or~~ biological quality of, or the contamination of, any land or ~~surface~~ or subsurface water in the state that renders the land ~~or water~~ harmful, detrimental, or injurious to humans, animal ~~life, vegetation~~, or property or to public health, safety, or ~~welfare or~~ impairs the usefulness or the public enjoyment of the ~~land or water for any lawful or reasonable purpose.~~

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 2, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, § 1.01, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.025, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.01, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, § 11.18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, § 30.204, eff. Sept. 1, 1997.

[1] 42 U.S.C.A. § 9604.

Revisor's Note

(1) The source law refers to the Texas Department of Health's authority to adopt rules. Article 4414b, Revised Statutes, provides that the Texas Board of Health is the entity that adopts rules. Consequently, the revised law assigns that duty to the Texas Board of Health.

(2) The source law definition of "environmental response law" refers to "Pub.L. No. 96–510." This reference is changed in the revised law to "42 U.S.C. Section 9601 et seq." for consistency with other citations to federal law.

(3) The source law refers to "an incorporated city or town." The revised law substitutes "municipality" for "city or town" because that is the term used in the Local Government Code. In addition, since under the Local Government Code all municipalities are incorporated, the revised law omits as redundant the reference to "incorporated" and refers only to municipalities.

(4) The revised law omits as unnecessary the source law definition of "notice of intent to file an application."

(5) The revised law omits the definition of "person" because a definition containing the same substance is provided by the definitions section of the Code Construction Act (Section 311.005, Government Code).

(6) The source law refers to Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes). That statute is revised as Chapter 401, and the revised law reflects this change.

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(7) The revised law omits the definition of "state agency" and "state agencies" contained in Section 4(a) of V.A.C.S. Article 4477–7. The source law gives the Texas Department of Health and the Texas Water Commission divided responsibilities in the regulation and management of solid waste. Many of the provisions of the source law apply to both the department and commission and many provisions apply equally to each separately. The omitted definition allowed a common reference to be used when referring to either or both of the agencies. That generic term is misleading to any reader of the law who is not familiar with the act as a whole and often does not work well in context. In this code the generic terms are eliminated and references to the department and commission are used as needed.

Historical and Statutory Notes

Section 1.25(a), (d), (e) of Acts 1991, 72nd Leg., ch. 296 provides:

"(a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.16 and 1.17 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article."

"(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

"(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste 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. The provisions of this article and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule."

Sections 1.29 and 3.01 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.29. If either S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the Governor, the duties, powers, and responsibilities conferred by this article on the Texas Water Commission, the Texas Department of Health, or the Texas Air Control Board are transferred to the Texas Department of Natural Resources."

"Sec. 3.01. This Act may be referred to as the Waste Reduction Policy Act of 1991."

Neither S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, was passed or approved by the Governor.

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.030 amended § 1.25 of Acts 1991, 72nd Leg., ch. 296 by adding (h) to read as follows:

"It is the policy of this state to encourage waste minimization through recycling. Therefore, the provisions of this article do not apply to any hazardous waste management facility that, before or during a recycling process, stores hazardous waste if the hazardous waste management facility engages only in storage incidental to a recycling process that does not include any treatment or disposal of hazardous waste by incineration, landfilling, or deep well injection on site. This subsection only applies to applications pending at the Texas Water Commission on the effective date of this article and does not apply to any commercial hazardous waste management facilities that burn waste-derived fuel."

Section 1 of Acts 1997, 75th Leg., ch. 385 provides:

"The Texas Natural Resource Conservation Commission shall:

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"(1) conduct a study of the cost and effectiveness of an electronic tracking system to track the quantity of hazardous waste required to be returned to the United States under the terms of the La Paz Agreement; and

"(2) not later than January 15, 1999, submit to the governor, the lieutenant governor, the speaker of the house, and both houses of the legislature a report containing the results of the study."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1973, 63rd Leg., ch. 576, § 1.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2946, ch. 503, § 1.
Acts 1985, 69th Leg., ch. 566, § 1.
Acts 1985, 69th Leg., ch. 795, § 1.160.
Acts 1985, 69th Leg., ch. 921, § 3.
Acts 1987, 70th Leg., ch. 279, § 1(a), (b).
Acts 1987, 70th Leg., ch. 305, §§ 4, 5, 14(1), (2).
Acts 1989, 71st Leg., ch. 536, § 2.
Acts 1989, 71st Leg., ch. 641, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 1, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 2.

Cross References

Municipal airports, treatment of hazardous waste as defined by this section, necessity of municipal permission, see V.T.C.A., Transportation Code § 22.076.
Recycling, exemption from franchise tax, see V.T.C.A., Tax Code § 171.085.
Removal and remedial action agreements, petroleum, see V.T.C.A., Health & Safety Code § 361.401.

Law Review and Journal Commentaries

Annual survey of Texas law: Environmental law. Scott D. Deatherage and Scott F. Wendorf, 52 SMU L.Rev. 1105 (1999).

Library References

10 Texas Pl & Pr Forms, Pollution and Conservation §§197:51, 197:61.

Texts and Treatises

12 Texas Jur 3d, Cons & Poll L §§17-19, 134.

[Sections 361.004 to 361.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Acts 1995, 74th Leg., ch. 76, § 11.19, eff. Sept. 1, 1995 amended the subchapter heading.

Administrative Code References

Natural Resource Conservation Commission, sludge use, disposal, and transportation, see 30 TAC § 312.1 et seq.
Agriculture Department, pesticides, storage and disposal, see 4 TAC § 7.21.
Air Control Board,
  Control of air pollution from hazardous waste or solid waste management facilities, see 31 TAC § 120.1 et seq.
  Control of air pollution from municipal solid waste facilities, see 31 TAC § 121.1 et seq.
Department of Health,
  Formal hearing procedures, hearings on administrative penalties, see 25 TAC § 1.33.
  Solid waste management, see 25 TAC § 325.1 et seq.
Industrial solid waste, see 31 TAC § 335.1 et seq.
Water commission,
  Applications processing,
    Draft permit and compliance summary, see 31 TAC § 281.21.
    Initial review, see 31 TAC § 281.3.
  Consolidated permits, see 31 TAC § 305.1 et seq.
  Enforcement, see 31 TAC § 337.1 et seq.
  Industrial solid waste and municipal hazardous waste, see 31 TAC § 335.1 et seq.

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~~§ 361.065. Repealed by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 3, § 1, eff. Sept. 6, 1990~~

Historical and Statutory Notes

The former section, relating to the permit application fee, was repealed to conform to Acts 1989, 71st Leg., ch. 1143, § 6, and was derived from:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1971, 62nd Leg., p. 2631, ch. 863.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 239, § 54.
Acts 1985, 69th Leg., ch. 457, § 3.
Acts 1985, 69th Leg., ch. 566, § 7.
Acts 1985, 69th Leg., ch. 887, § 1.
Acts 1985, 69th Leg., ch. 931, art. 8, § 2.
Vernon's Ann.Civ.St. art. 4477–7, § 4(k)(1), (4).
Acts 1989, 71st Leg., ch. 678, § 1.

§ 361.066. Submission of Administratively Complete Permit Application

(a) An applicant must submit any portion of an application that the commission determines is necessary to make the application administratively complete not later than the deadline set by the commission under Subsection (c).

~~(b) If an applicant does not submit an administratively complete application~~ as required by this section, the application is considered withdrawn, unless there are extenuating circumstances.

(c) The commission by rule shall establish a deadline for the submission of additional information or material after the applicant receives notice from the commission that the information or material is needed to make the application ~~administratively complete.~~

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.40, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, § 1, eff. Sept. 1, 1999.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 299, § 1.
Vernon's Ann.Civ.St. art. 4477–7, § 4(e)(4)(B).

~~§ 361.0665. Notice of Intent to Obtain Municipal Solid Waste Permit~~

(a) A person who applies for a municipal solid waste permit shall publish notice of intent to obtain a permit under this chapter at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

(b) Notice must include:

(1) a description of the location or proposed location of the facility;

(2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the commission;

(3) the manner in which the commission may be contacted for further ~~information; and~~

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"(1) received by the Texas Water Commission or the Texas Natural Resource Conservation Commission on or after the effective date of this Act; or

"(2) pending before the Texas Water Commission or the Texas Natural Resource Conservation Commission on the effective date of this Act."

Section 6 of Acts 1993, 73rd Leg., ch. 1044 provides:

"(a) Except as provided by Subsection (b) of this section, the changes in law made by this Act apply only to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is received by the Texas Water Commission or its successor on or after the effective date of this Act and to an application for a permit that is subject to Subsection (c), Section 361.0234, Health and Safety Code, as added by this Act.

"(b) The change in law made by Subsection (b), Section 361.081, Health and Safety Code, as amended by this Act, applies to an application for a permit under Subchapter C, Chapter 361, Health and Safety Code, that is:

"(1) received by the Texas Water Commission or its successor on or after the effective date of this Act; or

"(2) pending before the Texas Water Commission or its successor on the effective date of this Act."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 781, § 1.
Acts 1989, 71st Leg., ch. 583, § 1.
Vernon's Ann.Civ.St. art. 4477–7, § 4(e)(4)(B).

Notes of Decisions

Laches 1

1. **Laches**

Although solid waste facility was very near completion and public hearing had been held on permit application, action challenging facility was not barred by laches, where it appeared that plaintiffs who opposed its location did not know what was being constructed until a short time before bringing action and it did not appear that their failure to learn about it earlier was inexcusable. Bean v. Southwestern Waste Management Corp., S.D.Tex.1979, 482 F.Supp. 673.

§ 361.082. Application for Hazardous Waste Permit; Notice and Hearing

(a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission shall hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(f) An 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 in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by

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Section 361.110 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.

~~(g) On request under Section 361.082 by a person affected for a hearing on~~ the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be ~~in the amount of $20,000.~~

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.07, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(b) of Acts 1991, 72nd Leg. ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 457, § 2.
Acts 1985, 69th Leg., ch. 566, § 6.
Acts 1985, 69th Leg., ch. 795, § 1.162.
Vernon's Ann.Civ.St. art. 4477–7, § 4(f)(2).

~~§ 361.083. Evidence of Notice of Hearing~~

(a) Before the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the affected person's address as shown by the appropriate appraisal district real property appraisal records at the time of the mailing.

(c) The affidavit of the commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the appraisal district real property appraisal records at the time of mailing, is prima facie evidence of proper mailing.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 14, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, § 11.47, eff. Sept. 1, 1995.

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operator of a solid waste disposal site. Op.Atty. Gen. 1971, No. M–810.

2. Amount assured

Trust-fund assurance required of applicant for permit to build solid waste facility was not required to cover operation of facility, but was required only to cover cost of its closure; Solid Waste Disposal Act did not require single form of assurance encompassing both closure costs and operations liability, but instead allowed for trust fund to assure against cost of closing facility and liability insurance to assure against claims arising from operation of facility. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, writ granted, writ withdrawn, writ denied, rehearing of writ of error overruled.

In requiring financial assurance pursuant to Solid Waste Disposal Act from applicant for permit to construct solid waste facility, Water Commission acted within its discretion in accepting standard amounts of liability insurance provided for in regulation requiring "at least" $1 million per occurrence and $2 million annual aggregate; Commission was not bound to determine in advance probable amount of future claims in order to calculate required amount of liability insurance. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, writ granted, writ withdrawn, writ denied, rehearing of writ of error overruled.

3. Degree and duration of risks

In considering application for permit to construct solid waste facility, Water Commission complied with section of Solid Waste Disposal Act requiring it to demonstrate degree and duration of risks associated with waste-management activities in question; Commission set amount of trust fund and liability insurance at standard levels established in federal regulations adopted by Commission, relying upon mechanism provided in those regulations for periodically increasing amounts should the degree and duration of risks require. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, writ granted, writ withdrawn, writ denied, rehearing of writ of error overruled.

4. Finality

Order of Water Commission granting permit for solid waste facility was final, even though it stated that if closure fund would be utilized, permittee would be required to fully fund closure trust, and that permittee would be required to provide financial assistance for closure in form acceptable to Executive Director of Commission; Commission's decision plainly required utilization of trust fund, and limited Executive Director's discretion accordingly. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, writ granted, writ withdrawn, writ denied, rehearing of writ of error overruled.

5. Particular cases

Natural Resource Conservation Commission erred in overturning hearing examiners' finding that applicant for permits to construct and to operate waste storage and processing facility in salt dome had adequately demonstrated how it intended to obtain construction financing, as testimony on issue was not contradictory; witness purportedly providing conflicting testimony did not in fact testify that institutional debt financing could not be used during construction, but merely stated that he did not anticipate use of that type of investor during construction phase. Hunter Indus. Facilities, Inc. v. Texas Natural Resource Conservation Com'n (App. 3 Dist. 1995) 910 S.W.2d 96, rehearing overruled, writ denied, rehearing of writ of error overruled, motion dismissed.

§ 361.086. Separate Permit for Each Facility

(a) A separate permit is required for each solid waste facility.

(b) A permit under this subchapter may be issued only to the person in whose name the application is made and only for the facility described by the permit.

(c) A permit may not be transferred without first giving written notice to and receiving written approval of the agency that issued the permit.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.

Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

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Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(2), (7).

~~§ 361.0861. Separate Recycling or Recovery Permit Not Required~~

~~(a) A permit holder or a municipal solid waste management facility that has or plans to have a recycling, waste separation, energy and material recovery, or gas recovery or transfer facility established in conjunction with the permitted municipal solid waste management facility is not required to obtain for that recycling, waste separation, energy and material recovery, or gas recovery or transfer facility a separate permit from the commission or to apply for an amendment to an existing permit issued by the commission.~~

~~(b) A facility to which this section applies must register with the commission in accordance with commission rules and comply with commission rules adopted under this chapter.~~

~~(c) If a permit is otherwise required, the commission shall expedite the permit proceeding if the applicant is seeking a permit for a solid waste management facility that employs an innovative, high technology method of waste disposition and recycling.~~

~~Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 15, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, § 11.50, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, § 1, eff. Sept. 1, 1995.~~

~~Historical and Statutory Notes~~

~~Prior Laws:~~
~~Acts 1989, 71st Leg., ch. 641, § 1.~~
~~Vernon's Ann.Civ.St. art. 4477-7, § 4B.~~

§ 361.087. Contents of Permit

A permit issued under this subchapter must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the permit is issued, including the duration of the permit.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg. p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(2).

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~~§ 361.092. Registration for Extracting Materials from Certain Solid Waste Facilities~~

(a) The commission may require a registration to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The commission shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.54, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, § 2, eff. Sept. 1, 1995.

Historical and Statutory Notes

Section 3 of Acts 1995, 74th Leg., ch. 987 provides:

"A person who, on August 31, 1995, holds a permit issued under Section 361.092, Health and Safety Code, that but for the change in law made by this Act would be valid on September 1, 1995, is considered to hold a registration, if registration is required, under Section 361.092, Health and Safety Code, as amended by this Act."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2947, ch. 503, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(j).

~~**Library References**~~

Texts and Treatises

~~12 Texas Jur 3d, Cons & Poll L § 21.~~

§ 361.093. Regulation and Permitting of Rendering Plants

(a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

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Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Vernon's Ann.Civ.St. art. 4477–7, § 4(e)(9).

§ 361.094. Permit Holder Exempt From Local License Requirements

If a permit is issued, amended, renewed, or extended by the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.54, eff. Sept. 1, 1995.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477–7, § 4(e)(6).

§ 361.095. Applicant for Hazardous Waste Management Facility Permit Exempt From Local Permit

(a) An applicant for a permit under this subchapter is not required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state.

~~(b) A local government or other political subdivision of the state may not~~ adopt a rule or ordinance that conflicts with or is inconsistent with the requirements for hazardous waste management facilities as specified by the rules of the commission or by a permit issued by the commission.

(c) In an action to enforce a rule or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule or ordinance, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an application for or the issuance of a permit for the siting, construction, or operation of a hazardous waste management facility.

(e) The local government or other political subdivision whose rule or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and ~~the commission may become a party to the action.~~

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(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.15, eff. June 7, 1991.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.099. Prohibition on Permit for Hazardous Waste Management Unit in Wetlands

(a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

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3. Sufficiency of evidence

Evidence was sufficient to support Water Commission's findings regarding assumptions upon which emissions estimates were based in Commission's consideration of application for permit to build solid waste facility under Solid Waste Disposal Act; complaints regarding findings presented on appeal were directed at weight to be given such evidence, and Court of Appeals would not substitute its judgment for that of Commission on weight of evidence. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, writ granted, writ withdrawn, writ denied, rehearing of writ of error overruled.

Evidence was sufficient to support Water Commission's findings, in considering application for permit to build solid waste facility, that key design aspects of proposed incineration system would function as required; record indicated that equipment used in facility, whether new or used, would meet demands of new equipment, and one condition of permit was that equipment in facility operate properly and without resulting in violations of applicable laws and regulations regarding assumptions upon which emissions estimates were based in Commission's consideration of application for permit to build solid waste facility. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, writ granted, writ withdrawn, writ denied, rehearing of writ of error overruled.

Evidence was sufficient to support Water Commission's findings, in considering application for permit to build solid waste facility, that estimated emissions rates were properly computed; Commission could reasonably conclude that witness' testimony, that his employer would provide scrubbers sufficient to achieve 99% removal efficiency, had reference to design and operating particulars proposed in application but not introduced into evidence. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, writ granted, writ withdrawn, writ denied, rehearing of writ of error overruled.

§ 361.110. Termination of Authorization or Permit

Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

(1) in the case of each land disposal facility, on November 8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1986; or

(3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The revised law omits as executed the source law provision stating that a land disposal facility permit terminates on November 8, 1985, under certain circumstances.

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Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 457, § 3.
Vernon's Ann.Civ.St. art. 4477–7, § 4(*l*).

~~§ 361.111. Commission Shall Exempt Certain Municipal Solid Waste Management~~ Facilities

(a) The commission shall exempt from permit requirements a municipal solid waste management facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

(1) a municipality with a population of less than 50,000;

(2) a county with a population of less than 85,000;

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 802, § 5

(3) a facility used in the transfer of municipal solid waste that will transfer 125 tons per day or less; and

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 899, § 2.08 and Acts 1993, 73rd Leg., ch. 1045, § 10

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 802, § 5 and Acts 1993, 73rd Leg., ch. 1045, § 10

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted landfill not more than 50 miles from the materials recovery facility.

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 899, § 2.08

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted Type 1 landfill not farther than 50 miles from the materials recovery facility.

(b) The facility must comply with design and operational requirements established by commission rule that are necessary to protect the public's health and the environment.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 802, § 5

(c) To qualify for this exemption, the applicant must hold a public meeting on the siting of the facility in the municipality or county where the facility is to be located.

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(10) the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) establish a balanced approach to the objectives of preserving a valuable resource and protecting the natural environment; and

(11) recycling, reuse, treatment, or proper disposal of used oil produces a more advantageous cost-benefit ratio in accomplishing the goals of state law, and these considerations should be included in the source reduction and waste minimization plans adopted under Section 361.505 to the extent applicable.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 887, § 1, eff. Sept. 1, 1995.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see note following V.T.C.A., Health & Safety Code § 371.001.

United States Code Annotated

Federal actions with respect to recycled oil, see 42 U.S.C.A. § 6363.

§ 371.0025. Purpose and Scope

(a) The purposes of this chapter are to:

(1) ensure that this state's used oil program is consistent with and not more stringent than the federal program for the management of used oil under 40 C.F.R. Part 279 unless otherwise required by state or federal law; and

(2) establish a program to promote public and private do-it-yourselfer used oil collection centers and used oil collection centers.

(b) This chapter does not apply to used oil:

(1) generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code;

(2) exempted under 40 C.F.R. Section 279.10(g) because the oil has been introduced into a crude oil pipeline or is being processed at a petroleum refining facility; or

(3) generated through other activities exempted under 40 C.F.R. Part 271 or 279.

(c) This chapter does not apply to a used oil filter generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Added by Acts 1995, 74th Leg., ch. 887, § 2, eff. Sept. 1, 1995.

§ 371.003. Definitions

In this chapter:

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(1) "Aboveground tank" means a tank used to store or process oil that is not an underground storage tank as defined by 40 C.F.R. Section 280.12.

(2) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck. The term includes oil that is not labeled specifically for that use but is suitable for that use according to generally accepted industry specifications.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

(4) "Container" means a portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(5) "Do-it-yourselfer used oil collection center" means a site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers. A registered do-it-yourselfer used oil collection center that is also a used oil generator may commingle household do-it-yourselfer used oil with the used oil it generates.

(6) "Existing tank" means a tank that is used for the storage or processing of used oil and that as of September 1, 1995, is in operation or is being installed. A tank is being installed if the owner or operator has obtained all necessary federal, state, and local approvals or permits and:

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

(B) the owner or operator has entered into contractual obligations for installation of the tank that cannot be cancelled or modified without substantial loss.

(7) "Household do-it-yourselfer used oil" means oil that is derived from a household, including used oil generated by an individual through the maintenance of the individual's personal vehicle or equipment.

(8) "Household do-it-yourselfer used oil generator" means an individual who generates household do-it-yourselfer used oil.

(9) "New tank" means a tank for the storage or processing of used oil the installation of which begins on or after September 1, 1995.

(10) "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes.

(11) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used-oil-derived products, including blending used oil with virgin petroleum products, blending used oils to meet fuel specifications, filtration, simple distillation, chemical or physical separation, and rerefining.

(12) "Reclaiming" means processing material to recover a usable product or regenerating material, including recovering lead from a spent battery and regenerating spent solvents.

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(13) "Recycling" means:

(A) preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) burning used oil for energy recovery.

(14) "Rerefining" means applying processes to material composed primarily of used oil to produce high-quality base stocks for lubricants or other petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydrotreating, or polishing.

(15) "Rerefining distillation bottoms" means the heavy fraction of filtered and dehydrated used oil produced by vacuum distillation. The composition of still bottoms varies with column operation and feedstock.

(16) "Tank" means a stationary device designed to contain an accumulation of used oil that is constructed primarily of nonearthen materials that provide structural support, including wood, concrete, steel, and plastic.

(17) "Used oil" means oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

(18) "Used oil aggregation point" means a site or facility that accepts, aggregates, or stores used oil collected from:

(A) used oil generation sites owned or operated by the owner or operator of the used oil aggregation point and transported to the used oil aggregation point in shipments of not more than 55 gallons; or

(B) household do-it-yourselfers.

(19) "Used oil burner" means a facility in which used oil not meeting the specifications in 40 C.F.R. Section 279.11 is burned for energy recovery in a device listed in 40 C.F.R. Section 279.61(a).

(20) "Used oil collection center" means a site or facility that is registered by the commission to manage used oil and accepts, aggregates, or stores used oil collected from:

(A) used oil generators regulated under 40 C.F.R. Part 279, Subpart C, who transport used oil to the used oil collection center in shipments of not more than 55 gallons under 40 C.F.R. Section 279.24; or

(B) household do-it-yourselfers.

(21) "Used oil fuel marketer" means a person who:

(A) directs a shipment of used oil not meeting the specifications in 40 C.F.R. Section 279.11 from the person's facility to a used oil burner; or

(B) first claims that used oil to be burned for energy recovery meets the used oil specifications in 40 C.F.R. Section 279.11.

(22) "Used oil generator" means a person, by site, whose act or process:

(A) produces used oil; or

(B) first causes used oil to become subject to regulation.

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(23) "Used oil processor or rerefiner" means a facility that processes used oil.

(24) "Used oil transfer facility" means a transportation-related facility, including a loading dock, parking area, storage area, or other area, where shipments of used oil are held for more than 24 hours and not more than 35 days during the normal course of transportation. A transfer facility that stores used oil for more than 35 days is subject to 40 C.F.R. Part 279, Subpart F.

(25) "Used oil transporter" means a person who:

(A) transports used oil; or

(B) owns or operates a used oil transfer facility.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.045, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 899, § 4.05, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, § 11.122, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 3, eff. Sept. 1, 1995.

Historical and Statutory Notes

This section was amended by Acts 1995, 74th Leg., ch. 76, § 11.122. However, § 1.02(b) of Acts 1995, 74th Leg., ch. 76 provides:

"If any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see note following V.T.C.A., Health & Safety Code § 371.001.

~~[Sections 371.004 to 371.020 reserved for expansion]~~

SUBCHAPTER B. USED OIL RECYCLING PROGRAM

§ 371.021. Public Education

The commission shall conduct an education program to inform the public of the need for and benefits of the collection and recycling of used oil and used oil filters. The program shall:

(1) establish, maintain, and publicize a used oil information center that prepares and disperses materials and information explaining laws and rules regulating used oil and informing the public of places and methods for proper recycling of used oil;

(2) encourage the voluntary establishment of used oil collection and recycling programs by private businesses and organizations and by local governments and provide technical assistance to persons who organize those programs; and

(3) encourage local governments to procure recycled automotive and industrial oils and oils blended with recycled oils, if those oils meet equipment manufacturer's specifications.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, § 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

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~~(c) The commission shall appoint an advisory committee for the used oil~~ grant program. The advisory committee consists of seven members who serve at the pleasure of the commission and represent oil manufacturers as defined by Section 371.062, operators of used oil collection centers, and local governments. The advisory committee members serve without compensation and are not entitled to reimbursement for expenses incurred in the performance of their duties. The advisory committee shall:

(1) recommend criteria for grants;

(2) establish guidelines for allowable administrative expenses; and

(3) recommend grant recipients to the commission based on the used oil collection needs of this state.

(d) The commission by rule shall:

(1) establish procedures for the application for and criteria for the award of grants under this section; and

(2) adopt guidelines for allowable administrative expenses in accordance with guidelines established by the advisory committee.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, § 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

Historical and Statutory Notes

This section was amended by Acts 1995, 74th Leg., ch. 76, § 11.123. However, § 1.02(b) of Acts 1995, 74th Leg., ch. 76 provides:

"If any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see note following § 371.001.

§ 371.024. Collection Facilities

~~(a) All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers.~~

(b) A do-it-yourselfer used oil collection center and a used oil collection center shall:

(1) register biennially with the commission; and

(2) report annually to the commission the amounts of used oil collected by the center from the public.

~~(c) The commission shall adopt rules governing the registration of and~~ reporting by do-it-yourselfer used oil collection centers and ~~used oil~~ collection centers.

(d) The commission by rule shall ~~adopt~~ standards for managing and operating a do-it-yourselfer ~~used oil~~ collection center or a used oil collection center.

(e) The ~~commission~~ may impose a registration fee in an amount sufficient to ~~cover the actual cost of registering do-it-yourselfer used oil collection centers~~

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~~(c) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering used oil handlers other than generators.~~

(d) A used oil transporter may consolidate or aggregate loads of used oil for purposes of transportation but may not process used oil, except that a used oil transporter may conduct incidental processing operations, including settling and water separation, that occur in the normal course of the transportation of used oil but that are not designed to produce, or make more amenable for the production of, used-oil-derived products or used oil fuel.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, § 11.126, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 389, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

Section 24(e) of the 1991 act provides:

"Section 371.026, Health and Safety Code, as added by this Act, applies only to a person who transports, markets, or recycles used oil on or after April 1, 1992."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see note following § 371.001.

This section was amended by Acts 1995, 74th Leg., ch. 76, § 11.126. However, § 1.02(b) of Acts 1995, 74th Leg., ch. 76 provides:

"If any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."

Cross References

Civil penalties, application, see V.T.C.A., Health & Safety Code § 371.043.
Noncompliance with registration requirements as an offense, see V.T.C.A., Health & Safety Code § 371.041.
Used oil recycling fund, contributions from fees collected under this section, see V.T.C.A., Health & Safety Code § 371.061.

~~§ 371.027. Gifts and Grants~~

The commission may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, § 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see note following § 371.001.

Cross References

Used oil recycling fund, contributions from gifts collected under this section, see V.T.C.A., Health & Safety Code § 371.061.

§ 371.028. Rules

Not later than January 1, 1996, the commission shall adopt rules, standards, ~~and procedures necessary to implement the used oil recycling program estab-~~

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lished by this chapter. Unless otherwise required by federal or state law, the rules, standards, and procedures must be consistent with and not more stringent than the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, § 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see note following § 371.001.

[Sections 371.029 to 371.040 reserved for expansion]

SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

§ 371.041. Actions Prohibited

A person may not collect, transport, store, recycle, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. April 1, 1992. Amended by Acts 1995, 74th Leg., ch. 76, § 11.128, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, § 40, eff. Sept. 1, 1997.

Historical and Statutory Notes

Section 24(b) of the 1991 act, effective September 1, 1991, provides:

"Subchapter C, Chapter 371, Health and Safety Code, as added by this Act, takes effect April 1, 1992, and applies only to an offense that occurs on or after April 1, 1992. For purposes of this subsection, an offense is committed on or after April 1, 1992, if any element of the offense occurs on or after that date."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see note following § 371.001.

§ 371.042. Repealed by Acts 1997, 75th Leg., ch. 1072, § 60(b)(5), eff. Sept. 1, 1997

Historical and Statutory Notes

The repealed section, relating to criminal penalties, was derived from Acts 1991, 72nd Leg., ch. 303, § 8 and Acts 1995, 74th Leg., ch. 887, § 6.

§ 371.043. Civil Penalty

(a) Repealed by Acts 1997, 75th Leg., ch. 1072, § 60(b)(5), eff. Sept. 1, 1997.

(b) A civil penalty recovered in a suit brought by a local government under this section shall be divided equally between the state and the local government that brought the suit. The state shall deposit its recovery to the credit of the used oil recycling account.

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EPA APPROVED TEXAS REGULATORY REQUIREMENTS APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM *
June 2005

This Binder contains the following sets of regulations:

A. Texas Administrative Code, (TAC), Title 30, Environmental Quality, 2002, as amended, effective through December 31, 2001.

B. Texas Administrative Code, (TAC), Title 30, Environmental Quality, 2000, as amended, effective through December 31, 1999.

C. Texas Administrative Code, (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997.

D. Texas Administrative Code, (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994.

Please note the following:

(1) The 2002 TAC, Title 30 is the most recent version of the Texas authorized hazardous waste regulations. For a few provisions, the authorized version is found in the TAC, Title 30, Environmental Quality dated January 1, 1994, January 1, 1997, or December 31, 1999. Texas made subsequent changes to these provisions but these changes have not been authorized by EPA. The provisions from earlier sets of regulations are noted in the table below.

(2) Certain provisions found in the official regulations in this Binder include amendments that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. EPA will enforce the State regulations that are actually authorized by EPA. In the Table below, provisions with unauthorized amendments are presented in italics. The actual State regulatory text authorized by EPA (i.e., without the unauthorized amendments) is available as a separate document, *Addendum to the EPA-Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program, June 2005*. This document is available from EPA Region 6, EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202, Phone number: (214) 665-6444.

Texas Administrative Code (TAC), Title 30, Environmental Quality, 2002, as amended, effective through December 31, 2001 unless otherwise specified		
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*Copies of the Texas regulations that are incorporated by reference are available from West Publishing Company 620 Opperman Drive, P.O. Box 64526, Saint Paul, MN 55164-0779; Phone: 1-800-328-4880.

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305.125(6) (January 1, 1997)	Standard permit conditions. See page 1355 of 30 TAC, as amended January 1, 1997 for the authorized provision.	
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SUBCHAPTER A - INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL		
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335.1(113) (December 31, 1999)	Definitions "Remediation waste". Note this provision is located at 335.1(119) "Remediation waste" in the December 31, 2001 30 TAC. See page 2562 of 30 TAC, as amended December 31, 1999 for the authorized provision.	
335.2(a) and (c) *(See 335.2(c), effective 11/7/91 in the Addendum to the EPA Binder)*	Permit requirements. *335.2(c) includes amendments not authorized by EPA.* *See pages 2 and 3 of the Addendum to the EPA Binder (335.2(c) effective 11/7/91) for the wording of the authorized version of this provision.*	2609-2610
335.2(d) (January 1, 1997)	Permit requirements. See page 2379 of 30 TAC, as amended January 1, 1997 for the authorized provision.	

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335.2(i), (j), and (l)	Permits required during active life; post-closure permit requirements; HSWA requirements.	2611
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335.6(a) *(See 335.6(a), effective 7/29/92 in the Addendum to the EPA Binder)*	Notification requirements. *335.6(a) includes amendments not authorized by EPA.* *See pages 3 of the Addendum to the EPA Binder (335.6(a) effective 7/29/92) for the wording of the authorized version of this provision.*	2612-2613
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335.6(c) *(See 335.6(c) introductory paragraph, effective 7/29/92 in the Addendum to the EPA Binder)*	Notification requirements. *335.6(c) introductory paragraph includes amendments not authorized by EPA.* *See pages 3 and 4 of the Addendum to the EPA Binder (335.6 (c)introductory paragraph, effective 7/29/92) for the wording of the authorized version of this provision.*	2613
335.6(d) (except last sentence) and (e) (January 1, 1994)	Notification requirements for generators. See page 1856 of 30 TAC, as amended January 1, 1994 for the authorized provision.	
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335.7 (December 31, 1999)	Bond or other financial assurance required. See pages 2575-2576 of 30 TAC, as amended December 31, 1999 for the authorized provision.	
335.8(a)(1) and (2)	Closure and post-closure requirements.	2615
335.9(a)(except (a)(2) and (3))	Recordkeeping and annual reporting procedures applicable to generators.	2617-2618
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335.9(b) (January 1, 1994)	Generator who ships waste off-site must comply with reporting requirements. See page 1861 of 30 TAC, as amended January 1, 1994 for the authorized provision.	
335.10(a) introductory paragraph - (a)(1) (January 1, 1994)	Exceptions to shipment of hazardous or Class I waste. See page 1861 of 30 TAC, as amended January 1, 1994 for the authorized provision.	
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335.204(a)(1)-(5) *(See 335.204(a)(1), effective 5/28/86, in the Addendum to the EPA Binder)*	Unsuitable site characteristics: storage or processing facilities, excluding storage surface impoundments. *335.204(a)(1) includes amendments not authorized by EPA.* *See page 7 of the Addendum to the EPA Binder (335.204(a)(1) effective 5/28/86) for the wording of the authorized version of this provision.*	2691-2692
335.204(b)(1)-(6) *See 335.204(b)(1) and (6), effective 5/28/86, in the Addendum to the EPA Binder)*	Unsuitable site characteristics: land treatment facilities. *335.204(b)(1)and (6) includes amendments not authorized by EPA.* *See page 8 of the Addendum to the EPA Binder (335.204(b)(1)and (6) effective 5/28/86) for the wording of the authorized version of this provision.*	2692-2693
335.204(c)(1)-(5) *See 335.204(c)(1), effective 5/28/86, in the Addendum to the EPA Binder)*	Unsuitable site characteristics: waste piles. *335.204(c)(1) includes amendments not authorized by EPA.* *See page 8 of the Addendum to the EPA Binder (335.204(c)(1) effective 5/28/86) for the wording of the authorized version of this provision.*	2693-2694
335.204(d)(1)-(5) *See 335.204(d)(1), effective 5/28/86, in the Addendum to the EPA Binder)*	Unsuitable site characteristics: storage surface impoundments. *335.204(d)(1) includes amendments not authorized by EPA.* *See page 9 of the Addendum to the EPA Binder (335.204(d)(1) effective 5/28/86) for the wording of the authorized version of this provision.*	2694-2695
335.204(e) introductory paragraph	Unsuitable site characteristics: landfills.	2695

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335.204(e)(1) introductory paragraph (except the phrase "Except as. . . (B) of this paragraph," and the word "event" at the end of the paragraph)	Unsuitable site characteristics: landfills.	2695
335.204(e)(2) - (7) *See 335.204(e)(6), effective 5/28/86, in the Addendum to the EPA Binder)*	Unsuitable site characteristics: landfills. *335.204(e)(6) includes amendments not authorized by EPA.* *See page 9 of the Addendum to the EPA Binder (335.204(e)(6) effective 5/28/86) for the wording of the authorized version of this provision.*	2696
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335.213 (January 1, 1997)	Applicability. See page 2473-2474 of 30 TAC, as amended January 1, 1997 for the authorized provision.	
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Texas Administrative Code

Title 30 Environmental Quality

2002—Part One

[Replaces 2001 Pamphlet]

Amendments effective through
December 31, 2001

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§ 20.13. Action after Hearing Concluded

(a) After the close of the hearing and the receipt of all documents, the presiding officer shall prepare a report to the commission, which shall include:

(1) a summary of the subject of the hearing;

(2) a review and analysis of the comments submitted;

(3) any revisions recommended as the result of public comment presented;

(4) a copy of the rule as recommended for adoption; and

(5) other pertinent information.

(b) The report shall be submitted to the commission for final action.

Source: The provisions of this §20.13 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.15. Petition for Adoption of Rules

(a) Any person may petition the commission to request the adoption of a rule. Petitions shall be submitted in writing to: Executive Director, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, and shall comply with the following requirements:

(1) each rule requested must be submitted by separate petition;

(2) each petition must state the name and address of the petitioner;

(3) each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(b) A petition may be denied for failure to comply with the requirements of subsection (a) of this section.

(c) Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the APA.

Source: The provisions of this §20.15 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.17. Emergency Rules

If the commission finds that an imminent peril or extraordinary circumstance may threaten the public health, safety, or welfare or the integrity of the commission's regulatory programs, and requires the adoption of a rule on less than 30 day's notice, it may adopt an emergency rule without prior notice and hearing or with any abbreviated notice and hearing that it finds practicable under the circumstances. The commission shall make a written finding which shall be filed with the secretary of state setting forth its reasons for such determination. The emergency rule shall be effective immediately upon filing with the secretary of state and will continue in effect for a period of up to 120 days. The emergency rule may be renewed once before expiration for a period of 60 days.

Source: The provisions of this §20.17 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.19. Working Groups

Before initiating any formal rulemaking action, the commission may convene informal working groups to obtain viewpoints and advice of interested persons. The commission may also appoint working groups of experts or interested persons or representatives of the general public to advise it regarding any contemplated rulemaking. The powers of such working groups shall be advisory only.

Source: The provisions of this §20.19 adopted to be effective June 6, 1996, 21 TexReg 4719.

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

Section

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30.3. Purpose and Applicability.
30.5. General Provisions.
30.7. Definitions.
30.10. Administration.
30.14. Applications for Initial Registration.
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30.20. Examinations.
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30.51. Purpose and Applicability.
30.57. Definitions.

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duration than required to prevent the hazard. The injection authorized may not result in the movement of fluids into underground sources of drinking water.

(e) Public notice shall accompany the emergency order, shall allow at least 45 days for public comment, and shall be given at least 30 days before the hearing on the emergency order. Public notice of the order may be given at the same time as public notice and opportunity for comment on the order, and the two notices may be combined. The notice shall include:

(1) the name and address of the applicant;

(2) the name and location of the hazardous waste management facility;

(3) a brief description of the wastes involved;

(4) a brief description of the action authorized or to be authorized, and the reasons for authorization;

(5) the duration of the emergency order; and

(6) the name and address of the commission (the office granting the order).

Source: The provisions of this §35.402 adopted to be effective December 10, 1998, 23 TexReg 12413.

SUBCHAPTER H. RADIOACTIVE SUBSTANCES AND MATERIALS EMERGENCY

§ 35.501. Emergency Orders Relating to Radioactive Substances

(a) When an emergency exists as a result of a matter under the commission's jurisdiction that requires immediate action to protect the public health or safety or the environment, the commission or executive director may issue an emergency order under Texas Water Code, §5.516, and Texas Health and Safety Code, §401.056.

(b) The commission or executive director may issue an emergency order directing any action or corrective measure needed to correct or remove the threat to public health or safety or the environment when the commission or executive director determines that radioactive substances under its jurisdiction threatens the public health or safety or the environment and that the licensee managing the radioactive substances is unable to remove the threat.

(c) An emergency order issued under this section takes effect immediately. A person to whom an emergency order is directed shall comply immediately with that order.

(d) The emergency order shall be delivered to the person to whom the order is directed by hand delivery or by certified mail, return receipt requested. Affidavit of personal service, proof of mailing to the proper address, or the receipt shall be conclusive evidence of service.

(e) If the commission or executive director issues the emergency order without notice or hearing, the commission shall provide the person to whom the order is directed an opportunity for a hearing on written request within 30 days of the date of the order. If a hearing is requested, notice of the hearing shall be given to the person to whom the order is directed by hand delivery or certified mail, return receipt requested, at least ten days before the hearing. A requested hearing shall be held not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing request.

(f) All provisions of the emergency order shall remain in full force and effect during the pendency of a hearing, unless otherwise altered by the commission. At the conclusion of the hearing and after the proposal for decision is made, the commission shall make a determination to affirm, modify, or revoke the emergency order and may modify, revoke, or suspend the license based on the determination made.

(g) The commission shall use the financial assurance mechanism provided by a licensee to pay the costs of actions and corrective measures that are taken or that are to be taken under this section. The commission shall use this financial assurance mechanism under the procedure set out in Texas Health and Safety Code, Chapter 401.

(h) If the costs of actions and corrective measures require more funds than the financial assurance mechanism has provided, the commission shall request the attorney general to seek reimbursement from the licensee or person causing the threat.

(i) The commission shall seek reimbursement through a commission order or shall request the attorney general to file suit for reimbursement if the commission uses the funds provided by the licensee for security under Texas Health and Safety Code, Chapter 401, to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of the Texas Radiation Control Act (TRCA), the rules of this chapter, or a license or order issued by the commission under the TRCA or this chapter.

Source: The provisions of this §35.501 adopted to be effective December 10, 1998, 23 TexReg 12413.

§ 35.502. Emergency Impoundment of Radioactive Material

(a) In the event of an emergency, the commission or the executive director shall have the authority to

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§ 39.3. Purpose

This chapter specifies notice requirements for applications, hearings on applications, and hearings on contested enforcement cases, including requirements derived from statutes.

Source: The provisions of this §39.3 adopted to be effective January 8, 1997, 21 TexReg 12550.

§ 39.5. General Provisions

(a) If the chief clerk prepares a newspaper notice that is required by this chapter and the applicant does not cause the notice to be published within 30 days of receipt of the notice from the chief clerk, the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication within 30 days of publication.

(b) The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) When this chapter requires notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Unless otherwise provided in this chapter, public notice requirements apply to applications for initial permits or applications for the amendment, modification, or renewal of permits.

(e) If an applicant submits more than one application for a facility, notice may be combined to satisfy more than one section of this chapter.

(f) When this chapter requires an applicant to publish notice, the applicant must file an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit is the day of the public meeting for notice of public meeting, two days before a public hearing for notice of a public hearing, and 30 days after the last publication for other published notices. For notice of a public meeting, the applicant must also submit the affidavit to the executive director no later than the day of the public meeting. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice.

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements.

(h) When this chapter requires notice be broadcast according to this subsection, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

Source: The provisions of this §39.5 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578; amended to be effective December 10, 1998, 23 TexReg 12426; amended to be effective June 17, 1999, 24 TexReg 4426; amended to be effective September 14, 2000, 25 TexReg 8857

§ 39.7. Mailing Lists

The chief clerk shall maintain mailing lists of persons requesting public notice of certain applications. Persons, including participants in past commission permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

Source: The provisions of this §39.7 adopted to be effective January 8, 1997, 21 TexReg 12550.

§ 39.9. Deadline for Public Comment and Hearing Requests

Notice under this chapter will specify a deadline to file public comment and if applicable, hearing requests. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications).

Source: The provisions of this §39.9 adopted to be effective January 8, 1997, 21 TexReg 12550.

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§ 39.11. Text of Public Notice

When notice by publication or by mail is required by this chapter, the text of the notice must include:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures, and the time and place of any public meeting or public hearing;

(6) a statement of procedures by which the public may participate in the final permit decision and, if applicable, how to request a hearing, or a statement that later notice will describe procedures for public participation;

(7) for notices of public meetings or hearings, the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;

(8) the application or permit number;

(9) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless there is a (if applicable) request for hearing filed with the chief clerk;

(10) if applicable, the deadline to file comments and, if applicable, hearing requests;

(11) a statement of whether the executive director has prepared a draft permit; and

(12) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies.

Source: The provisions of this §39.11 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578; amended to be effective September 14, 2000, 25 TexReg 8857

§ 39.13. Mailed Notice

When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

(1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) the county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) if applicable, local, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c), as amended and adopted in the CFR through May 2, 1989, at 54 FedReg 18786;

(8) if applicable, persons on a mailing list developed and maintained in accordance with 40 Code of Federal Regulations, §124.10(c)(1)(ix);

(9) the applicant;

(10) if the application concerns an injection well, the Water Well Drillers Advisory Council;

(11) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists);

(12) any other person the executive director or chief clerk may elect to include;

(13) if applicable, the secretary of the Coastal Coordination Council; and

(14) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests.

Source: The provisions of this §39.13 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578; amended to be effective August 8, 1999, 24 TexReg 5872; amended to be effective September 14, 2000, 25 TexReg 8857

§ 39.15. Public Notice Not Required for Certain Types of Applications

(a) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §305.65 of this title (relating to Corrections of Permits);

(2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(3) applications for transportation route special permits under §330.32 of this title (relating to Collection and Transportation Requirements).

(b) For the voluntary transfer of permits, no public notice shall be required, except that:

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~~(f) Notice of hearing.~~

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.5(g) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file an affidavit certifying compliance with this paragraph with the chief clerk. Filing an affidavit certifying facts that constitute compliance with the notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes an amendment of a permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection shall be completed at least 30 days before the hearing.

Source: The provisions of this §39.101 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective ~~September 23, 1999, 24 TexReg 8190~~

§ 39.103. Application for Industrial or Hazardous Waste Facility Permit

~~(a) Preapplication requirements.~~

(1) If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. Mailed notice shall be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission ~~in a paper of general circulation in the county in which the facility is to be located.~~

(2) The requirements of this paragraph are set forth at 40 CFR §124.31(b)-(d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(b) Notice of receipt of application. When the executive director receives an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 Code of Federal Regulations (CFR) §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417. The requirements of this paragraph relating to 40

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CFR §124.32(b)-(c) do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

~~(c) Review of permit application by other governmental agencies.~~ After the executive director determines that the application is administratively complete, the executive director shall mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.

(d) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under ~~§39.5(h) of this title (relating to General Provisions).~~

(4) The notice shall specify the deadline to file public comment or hearing requests. For industrial solid waste applications, the deadline shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

~~(e) Notice of public meeting.~~

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided under this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns an industrial solid waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to

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the persons listed in §39.13 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under §39.5(h) of this title.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days before the hearing.

(g) Information repository. The requirements of 40 Code of Federal Regulations (CFR) §124.33(b)-(f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, apply to all applications for hazardous waste permits.

(h) This section does not apply to applications for an injection well permit.

Source: The provisions of this §39.103 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective August 8, 1999, 24 TexReg 5872

§ 39.105. Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit

(a) Notice requirements for Class 1 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits.

(b) The text of required notice shall follow the requirements of §39.11 of this title (relating to Text of Public Notice) and the additional requirements in §305.69 of this title.

(c) When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(d) The effective date of the amendment of existing §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit) and this new §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration) is June 3, 2002. Applications for modifications filed before this amended section and new §39.106 of this title become effective, will be subject to this section as it existed prior to June 3, 2002.

Source: The provisions of this §39.105 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective December 30, 2001, 26 TexReg 10989.

§ 39.106. Application for Modification of a Municipal Solid Waste Permit or Registration

(a) When mailed notice is required under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), the mailed notice shall be mailed by the permit or registration holder and the text of the notice shall comply with §39.411(b)(1)–(3), (6), (7), (9), and (12) of this title (relating to Text of Public Notice), and shall provide the location and phone number of the appropriate regional office of the commission to be contacted for information on the location where a copy of the application is available for review and copying.

(b) When mailed notice is required by §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), notice shall be mailed by the permit or registration holder to the persons listed in §39.413 of this title (relating to Mailed Notice).

(c) The effective date of the amendment of existing §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit) and this new §39.106 is June 3, 2002. Applications for modifications filed before amended §39.105 of this title and this new §39.106 become effective, will be subject to §39.105 of this title as it existed prior to June 3, 2002.

Source: The provisions of this §39.106 adopted to be effective December 30, 2001, 26 TexReg 10989.

§ 39.107. Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit

The notice requirements for Class 2 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall comply with §305.69 of this title and §39.11 of this title (relating to Text of Public Notice). The notice shall specify the deadline to file with the chief clerk public comment. The deadline is specified in §305.69 of this title. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title

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trol (UIC) Permit Modifications at the Request of the Permittee);

(13) applications for minor modifications of Texas Pollutant Discharge Elimination System (TPDES) permits under §305.62(c)(3) of this title; or

(14) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice).

(d) Applications for initial issuance of voluntary emission reduction permits under Texas Health and Safety Code, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Voluntary Emission Reduction Permits), except that any reference to requests for reconsideration or contested case hearings in §39.409 of this title or §39.411 of this title shall not apply.

(e) Applications for Radioactive Materials Licenses under Chapter 336 of this title are not subject to §§39.405(c) and (e), 39.418, 39.419, 39.420, and certain portions of §39.413 of this title (relating to Mailed Notice).

Source: The provisions of this §39.403 adopted to be effective September 23, 1999, 24 TexReg 8190; amended to be effective December 30, 2001, 26 TexReg 10989.

§ 39.405. General Notice Provisions

(a) Failure to Publish Notice. If the chief clerk prepares a newspaper notice that is required by Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) or Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur:

(1) the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication; or

(2) the executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it shall be exempt from any application fee requirements.

(b) Electronic Mailing Lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or Hand Delivery. When Subchapters H-L of this chapter or Subchapter G of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined Notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and Affidavit. When Subchapters H-L of this chapter or Subchapter G of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is 10 business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published Notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which

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the facility is located or proposed to be located, except for air applications required to publish in a newspaper of general circulation in a municipality under §39.603 of this title (relating to Newspaper Notice); and

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county.

(g) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant is required to indicate in the public file that there is additional information in a confidential file. The copy of the application shall comply with the following:

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period; and

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to SOAH.

Source: The provisions of this §39.405 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.407. Mailing Lists

The chief clerk shall maintain mailing lists of persons requesting notice of an application. Persons, including participants in past agency permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

Source: The provisions of this §39.407 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.409. Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing

Notice given under this chapter will specify any applicable deadline to file public comment specified under §55.152 of this title (relating to Public Comment) and, if applicable, any deadlines to file requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

Source: The provisions of this §39.409 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.411. Text of Public Notice

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H-L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Mailed Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a

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~~contested case hearing, that only disputed factual~~ issues that are relevant and material to the commissions's decision that are ~~raised~~ during the comment period can be considered if a contested case hearing ~~is granted.~~

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

~~(10) for notices of air applications:~~

(A) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Control of Air Pollution from Toxic Materials, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(B) if notice is for applications described in §39. 403(b)(11) or (12) of this title (relating to Applicability), a statement that any person is entitled to request a notice and comment hearing from the commission. If notice is for any other air application the following information which must be printed in ~~a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:~~

(i) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(ii) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(iii) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity; and

(iv) and that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a contested case hearing;

(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Natural Resource Conservation Commission;" and

(11) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; ~~and~~

(12) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

~~(13) for radioactive material licenses under Chapter~~ 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments ~~may be submitted.~~

(14) for Class 3 modifications of hazardous industrial solid waste permits the statement "The permittees compliance history during the life of the permit being modified is available from the agency contact person."

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(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G-L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1)-(12) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit; and

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(7) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G-L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1)-(3), (6)-(8), and (12) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

Source: The provisions of this §39.411 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.413. Mailed Notice

Unless otherwise specified in Subchapters I-M of this chapter (relating to Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses), when this chapter requires mailed notice, the chief clerk shall mail notice to:

(1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) The county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) if applicable, local, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c), as amended and adopted in the CFR through May 2, 1989 at 54 FedReg 18786;

(8) if applicable, persons on a mailing list developed and maintained in accordance with 40 CFR §124.10(c)(1)(ix);

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proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b)-(c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice shall be given as required by §39.418 of this title. Notice under §39.418 will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title shall be published once as required by §39.405(f)(2) of this title. In addition to the requirements of §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county which is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice shall comply with §39.411 of this title. The deadline for public comments on industrial solid waste applications shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of

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§ 55.25. Public Comment Processing

~~(a) The chief clerk shall deliver or mail to the~~ executive director, the public interest counsel, the director of the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents timely filed with the chief clerk in response to public notice of an application.

(b) This subsection applies to applications concerning hazardous waste facilities, underground injection wells, or Texas Pollutant Discharge Elimination System (TPDES) permits. It applies to an application only when the commission has federal authorization to manage the permitting program ~~under which the application is evaluated.~~

(1) Before an application is approved, the executive director shall prepare a response to all significant public comment on the draft permit raised during the public comment period. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. The executive director shall make the response available to the public.

(A) If the application is acted on by the commission under §50.13 of this title (relating to Action on Application) or §55.27(a)(1) of this title (relating to Commission Action on Hearing Request), the executive director's response to public comment shall be made available to the public and filed with the chief clerk at least ten days before the commission acts on the application. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title (relating to Action by the Executive Director), the response to public comment should be made no later than the time of the executive director's action on the application.

(2) The executive director may call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law. If a contested case hearing is held on the application, the public meeting shall be conducted as part of the preliminary hearing under §80.105 of this title (relating to Preliminary Hearings), unless the executive director specifies a different time and place for the public meeting. If the executive director specifies a different time and place for the public meeting, then public comment shall not be taken at the preliminary hearing. This paragraph supersedes and controls any conflict between this paragraph and §80.105 of this title (relating to Preliminary Hearings). The public comment period shall automatically be extended to the close of any public meeting. Public notice of the meeting shall be given as required by commission rule. The applicant shall attend any public meeting held by the executive director. A tape recording or written transcript of the public meeting shall be made available to the public.

(3) Any person who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under this subsection, and failed to participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.19 of this title (relating to Notice of Commission Action, Motion for Rehearing) or §55.27 of this title (relating to Commission Action on Hearing Request) or §80.271 of this title (relating to Motion for Rehearing) or may file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration) only to the extent of the changes from the draft permit to the final permit decision.

~~(c) This subsection applies to applications other~~ than those under subsection (b) of this section. The commission may designate an agency office to process public comment under this subsection.

(1) The designated office may evaluate and respond to public comment, other than timely hearing requests, when appropriate.

(A) If the application and timely hearing requests are considered by the commission, the designated office should prepare any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk.

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title, any response to public comment should be made no later than the time of the executive director's action on the application.

(2) The designated office shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is ~~intended for the taking of public comment, and is~~

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~~Source: The provisions of this §55.150 adopted to be effective October 20, 1999, 24 TexReg 9015~~

§ 55.152. Public Comment Period

~~(a) Public comments must be filed with the chief~~ clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air application not otherwise specified in this section;

(2) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or a concrete batch plant exemption from permitting or permit by rule under Chapter 106 of this title (relating to Exemptions from Permitting);

(3) 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(4) 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(5) the time specified in commission rules for other specific types of applications; or

(6) as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public meeting.

Source: The provisions of this §55.152 adopted to be effective October 20, 1999, 24 TexReg 9015

§ 55.154. Public Meetings

(a) A public meeting is intended for the taking of public comment, and is not a contested case under the APA.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or Office of Public Assistance may hold public meetings. The executive director or Office of Public Assistance shall hold a public meeting if:

(1) the executive director determines that there is a substantial or significant degree of public interest in an application;

(2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; or

(3) when a public meeting is otherwise required by law.

(d) The applicant shall attend any public meeting held by the executive director or Office of Public Assistance. A tape recording or written transcript of the public meeting shall be made available to the public.

(e) Public notice of the meeting shall be given as required by §39.411(d) of this title (relating to Text of Public Notice).

Source: The provisions of this §55.154 adopted to be effective October 20, 1999, 24 TexReg 9015

§ 55.156. Public Comment Processing

~~(a) The chief clerk shall deliver or mail to the~~ executive director, the Office of Public Interest Counsel, the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.

~~(b) If comments are received, the following procedures apply to the executive director.~~

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment, whether or not withdrawn, and specify if a comment has been withdrawn. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

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hazardous waste management facility permit applications under §§281.30-281.32 of this title (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste; Definitions; Prioritization Process).

Source: The provisions of this §281.1 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective November 7, 1994, 19 TexReg 8542.

§ 281.2. Applicability

These sections are applicable to the processing of:

(1) applications for new, amended, or renewed water use permits, certificates of adjudication and certified filings, and extensions of time to commence and/or complete construction of water use facilities;

(2) applications for new, amended, or renewed wastewater discharge permits;

(3) applications for new, amended, or renewed injection well permits;

(4) applications for new, amended, or modified or renewed industrial solid and/or municipal hazardous waste permits filed pursuant to §335.2 of this title (relating to Permit Required) and §335.43 of this title (relating to Permit Required) or for new or amended compliance plans filed pursuant to §305.401 of this title (relating to Compliance Plan);

(5) applications for plan approval of reclamation projects (levees, etc.);

(6) applications for creation of water districts;

(7) water district applications and petitions requiring commission approval;

(8) applications for weather modification permits and licenses;

(9) applications for new or amended certificates of convenience and necessity;

(10) applications for new, amended, or renewed municipal solid waste permits; and

(11) applications for new, amended, or renewed radioactive material licenses.

Source: The provisions of this §281.2 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987; 17 TexReg 2102; amended to be effective January 7, 1993, 17 TexReg 9124; amended to be effective November 7, 1994, 19 TexReg 8542; amended to be effective June 5, 1997, 22 TexReg 4581.

§ 281.3. Initial Review

(a) Applications for permits, licenses, or other types of approvals, except as provided in subsections (b) and (d) of this section, shall be reviewed by the staff for administrative completeness within ten working days of receipt of the application by the executive director.

(b) Applications made under §335.43 of this title (relating to Permit Required) or §331.7 of this title (relating to Permit Required) shall be reviewed by the staff for administrative completeness within 15 working days after assignment of the application to a staff member for review under this section. Prior to commencement of review of an application under this section, the executive director shall notify the applicant by first-class mail of the date on which the review will commence.

(c) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, applicants for existing hazardous waste management facilities shall have 30 days from receipt of notice of deficiency in a Part A permit application to respond to the notification and to explain or cure the alleged deficiency in the Part A application. Applicants shall be afforded this opportunity to cure the deficiencies before the executive director may pursue enforcement action concerning deficient applications.

(d) Applications made under Chapter 336 of this title (relating to Radioactive Substance Rules) for issuance or renewal of a license, or for major amendments to a license, shall be reviewed for administrative completeness within 45 days after receipt of the application by the executive director. Applications for minor amendments shall be reviewed for administrative completeness within 30 days after receipt of the application by the executive director.

Source: The provisions of this §281.3 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective January 7, 1993, 17 TexReg 9124; amended to be effective June 5, 1997, 22 TexReg 4581.

§ 281.4. Applications for Use of State Water

Applications for the use of state water must include:

(1) complete application form(s), signed and notarized;

(2) the payment of fees in accordance with §§295.131-295.139 of this title (relating to Water Use Permit Fees);

(3) the verified legal status of the applicant;

(4) appropriate ownership documents (including easements and consents);

(5) an adequate map or plat;

(6) the required engineering plans or studies; and

(7) any other information as the executive director or the commission may reasonably require.

Source: The provisions of this §281.4 adopted to be effective May 28, 1986, 11 TexReg 2312.

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Section
305.127. Conditions To Be Determined for Individual Permits.
305.128. Signatories to Reports.
305.129. Variance Procedures.

SUBCHAPTER G. ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

305.141. Applicability.
305.142. Duty To Comply.
305.143. Recordkeeping.
305.144. Certification and Inspection.
305.145. Release or Discharges of Solid Waste.
305.147. Monitoring of Commercial Hazardous Waste Management Facility Operations.
305.148. Impact of New Hazardous Waste Management Facilities on Local Land Use.
305.149. Time Limitation for Construction of Commercial Hazardous Waste Management Units.
305.150. Incorporation of References.

SUBCHAPTER H. ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

305.151. Applicability.
305.152. Corrective Action.
305.154. Standards.
305.155. Production Area Authorization.
305.156. Hazardous Waste.
305.157. Record Retention.
305.158. Additional Conditions.
305.159. Additional Class I Conditions.

SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

305.171. Determining Operational Readiness.
305.172. Determining Feasibility of Compliance and Adequate Operating Conditions.
305.173. Operation Prior to Final Amendment of the Permit.
305.174. Existing Incinerators.
305.175. Conditional Exemption for Demonstrating Compliance with Certain Air Standards.

SUBCHAPTER J. PERMITS FOR LAND TREATMENT DEMONSTRATIONS USING FIELD TESTS OR LABORATORY ANALYSES

305.181. Treatment Demonstration Permit.
305.182. Two-Phase Facility Permit.
305.183. Certification.
305.184. Permit Amendment or Modification.

SUBCHAPTER K. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

305.191. Applicability and Scope.
305.192. Waiver of Requirements.
305.193. Termination.
305.194. Renewal.

SUBCHAPTER L. GROUNDWATER COMPLIANCE PLAN

305.401. Compliance Plan.

SUBCHAPTER M. WASTE TREATMENT INSPECTION FEE PROGRAM

305.501. Purpose.
305.502. Definitions and Abbreviations.
305.503. Fee Assessment.
305.504. Fee Payment.
305.505. Fund.
305.506. Cancellation, Revocation, and Transfer.
305.507. Failure To Make Payment.

SUBCHAPTER N. ADOPTION OF MEMORANDUM OF UNDERSTANDING BY REFERENCE

305.521. Adoption of Memorandum of Understanding by Reference.

SUBCHAPTER O. ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

305.531. Establishing and Calculating Additional Conditions and Limitations for TPDES Permits.
305.532. Adoption of Appendices by Reference.
305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs.
305.534. New Sources and New Dischargers.
305.535. Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities.
305.536. Requirements for Applications and Permits with Sludge Related Conditions.
305.537. Reporting Requirements for Planned Physical Changes to a Permitted Facility.
305.538. Prohibitions for TPDES Permits.
305.539. Additional Requirements for Shrimp Aquaculture Facilities Within the Coastal Zone.

SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TPDES PERMITS

305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits.

SUBCHAPTER Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

305.571. Applicability.
305.572. Permit and Trial Burn Requirements.
305.573. Interim Status and Trial Burn Requirements.

SUBCHAPTER A. GENERAL PROVISIONS

§ 305.1. Scope and Applicability

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under the Texas Water Code, Chapters 26, 27, and 28, and the Texas Health and Safety Code, Chapters 361 ~~and 401.~~

~~(b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State~~

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of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system (TPDES). The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in Texas Water Code, §26.001.

(1) The following are point sources requiring TPDES permits for discharges:

(A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations);

(B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations (CFR) §122.24;

(C) discharges into aquaculture projects as set forth in 40 CFR §122.25;

(D) discharges from separate storm sewers as set forth in 40 CFR §122.26; and

(E) silvicultural point sources as defined in 40 CFR §122.27.

(2) The TPDES permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing the Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of Subtitle C, the Federal Solid Waste Disposal Act, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with the CWA, §405.

(3) The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under the CWA, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

Source: The provisions of this §305.1 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.2. Definitions

The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Health and Safety Code, §§361.003, 401.003, and 401.004, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Application—A formal written request for commission action relative to a permit, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

(2) Bypass—The intentional diversion of a waste stream from any portion of a treatment facility.

(3) Class I sludge management facility—Any publicly owned treatment works (POTW) identified under 40 Code of Federal Regulations (CFR), §403.10(a) as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(4) Component—Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

(5) Continuous discharge—A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(6) Corrective action management unit (CAMU)—An area within a facility that is designated by the commission under 40 CFR, Part 264, Subpart S, 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 (relating to Corrective Action Relating to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes while implementing such corrective action requirements at the facility.

(7) CWA—Clean Water Act (formerly referred to as the Federal Water Pollution and Control Act or

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Federal Water Pollution Control Act Amendments of 1972) Public Law 92–500, as amended by Public Law 95–217, Public Law 95–576, Public Law 96–483, and Public Law 97–117, 33 United States Code, 1251 et seq.

(8) Daily average concentration—The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) For domestic wastewater treatment plants—When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) For all other wastewater treatment plants—When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

(9) Daily average flow—The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

(10) Direct discharge—The discharge of a pollutant.

(11) Discharge Monitoring Report (DMR)—The EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

(12) Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

(13) 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.

(14) Effluent limitation—Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

(15) Environmental Protection Agency (EPA)—The United States Environmental Protection Agency.

(16) Facility—Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units;

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

(17) Facility mailing list—The mailing list for a facility maintained by the commission in accordance with 40 CFR, §124.10(c)(1)(ix) and §39.7 of this title (relating to Public Notice). For Class I injection well underground injection control (UIC) permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(18) Functionally equivalent component—A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(19) Indirect discharger—A nondomestic discharger introducing pollutants to a POTW.

(20) Injection well permit—A permit issued pursuant to Texas Water Code, Chapter 27.

(21) Land disposal facility—Includes landfills, waste piles, surface impoundments, land farms and injection wells.

(22) National Pollutant Discharge Elimination System (NPDES)—The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405. The term includes an approved program.

(23) New discharger—

(A) Any building, structure, facility, or installation:

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(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective NPDES permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

(24) New source—Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under CWA, §306; or

(B) after proposal of standards of performance in accordance with CWA, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

(25) Operator—The person responsible for the overall operation of a facility.

(26) Outfall—The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.

(27) Owner—The person who owns a facility or part of a facility.

(28) Permit—A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(29) Person—An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.

(30) Primary industry category—Any industry category listed in 40 CFR, Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

(31) Process wastewater—Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(32) Processing—The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline or other means.

(33) 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 the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(34) Radioactive material—A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(35) Recommencing discharger—A source which recommences discharge after terminating operations.

(36) Regional administrator—Except when used in conjunction with the words "state director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Natural Resource Conservation Commission, or to the Texas Natural Resource Conservation Commission, consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 CFR, Part 122, is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(37) Remediation waste—All solid and hazardous wastes, and all media (including groundwater, sur-

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face 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 (relating to 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 the Texas Water Code, §7.031, §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title.

(38) Schedule of compliance—A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with CWA and regulations.

(39) Severe property damage—Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

(40) Sewage sludge—The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(41) Site—The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(42) Solid waste permit—A permit issued under Texas Civil Statutes, Article 4477-7, as amended.

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

(44) Texas pollutant discharge elimination system (TPDES)—The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405; Texas Water Code; and Texas Administrative Code regulations.

(45) Toxic pollutant—Any pollutant listed as toxic under the CWA, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA, §405(d).

(46) Treatment works treating domestic sewage—A POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(47) Variance—Any mechanism or provision under CWA, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA or this title.

(48) Wastewater discharge permit—A permit issued under Texas Water Code, Chapter 26.

(49) Wetlands—Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

Source: The provisions of this §305.2 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 22, 1994, 19 TexReg 941; amended to be effective December 1, 1997, 22 TexReg 11391; amended to be effective August 8, 1999, 24 TexReg 5879; amended to be effective September 14, 2000, 25 TexReg 8974; amended to be effective November 15, 2001, 26 TexReg 9123.

§ 305.3. Abbreviations

The following abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) CFR—Code of Federal Regulations.

(2) CWA—Clean Water Act.

(3) DMR—Discharge monitoring report.

(4) EPA—United States Environmental Protection Agency.

(5) NPDES—National pollutant discharge elimination system.

(6) POTW—Publicly owned treatment works.

(7) TPDES—Texas pollutant discharge elimination system.

Source: The provisions of this §305.3 adopted to be effective October 8, 1990, 15 TexReg 5492.

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SUBCHAPTER B. EMERGENCY ORDERS, TEMPORARY ORDERS, AND EXECUTIVE DIRECTOR AUTHORIZATIONS

§ 305.21. Emergency Orders and Temporary Orders Authorized

The commission or executive director may issue emergency orders, or the commission may issue temporary orders, relating to the discharge of waste or pollutants into or adjacent to any water in the state under Texas Water Code, §5.509, and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

Source: The provisions of this §305.21 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective December 10, 1998, 23 TexReg 12440.

§ 305.29. Emergency Orders for Solid Waste Activities

The commission or executive director may issue a mandatory or prohibitory emergency order regarding any activity of solid waste management within its jurisdiction under Texas Water Code, §5.512 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

Source: The provisions of this §305.29 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective February 11, 1997, 22 TexReg 1168; amended to be effective December 10, 1998, 23 TexReg 12440.

§ 305.30. Emergency Actions Concerning Hazardous Waste

The commission or executive director may issue an emergency administrative order relating to hazardous waste under Texas Water Code, §5.512 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

Source: The provisions of this §305.30 adopted to be effective December 10, 1998, 23 TexReg 12440.

§ 305.31. Emergency Orders Relating to Radioactive Substances

When an emergency exists as a result of a matter under the commission's jurisdiction that requires immediate action to protect the public health or safety or the environment, the commission or executive director may issue an order under Texas Water Code, §5.516, Texas Health and Safety Code, §401.056, and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) stating the existence of the emergency and requiring that actions be taken to meet the emergency.

Source: The provisions of this §305.31 adopted to be effective June 5, 1997, 22 TexReg 4583; amended to be effective December 10, 1998, 23 TexReg 12440.

SUBCHAPTER C. APPLICATION FOR PERMIT

§ 305.41. Applicability

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under Texas Water Code Chapters 26, 27 and 28, and Texas Health and Safety Code Chapters 361 and 401.

Source: The provisions of this §305.41 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.42. Application Required

(a) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and Texas Health and Safety Code, §361.082(e) shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under Texas Health and Safety Code, Chapter 361, 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 have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 Code of Federal Regulations, §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(c) An application for a new, amended, or renewed radioactive material license under Chapter

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336 of this title (relating to Radioactive Substance Rules) shall consist of one signed original and five copies. The executive director may request additional copies. Copies of an application for a low-level radioactive waste disposal license under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be retained by the applicant for distribution in accordance with written instructions from the executive director.

(d) For applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or operator is subject to the requirements for updating the Part A application under 40 Code of Federal Regulations §270.10(g), as amended and adopted in the Code of Federal Regulations through June 29, 1995, (see 60 FedReg 33911).

(e) Applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.

Source: The provisions of this §305.42 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective August 30, 1988, 13 TexReg 4071; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective October 19, 1998, 23 TexReg 10653; amended to be effective September 14, 2000, 25 TexReg 8974; amended to be effective December 16, 2001, 26 TexReg 10102.

§ 305.43. Who Applies

(a) It is the duty of the owner of a facility to submit an application for a permit; however, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit, and for all Texas pollutant discharge elimination system (TPDES) permits, it is the duty of the operator and the owner to submit an application for a permit.

(b) For solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit.

Source: The provisions of this §305.43 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

§ 305.44. Signatories to Applications

(a) All applications shall be signed as follows.

(1) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this paragraph, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(2) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or a ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrator of the United States Environmental Protection Agency).

(b) A person signing an application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) For hazardous solid waste permit applications, the owner and operator of a facility must sign the application.

(d) For radioactive material license applications under Chapter 336 of this title (relating to Radioactive Substance Rules), the applicant or person duly authorized to act for and on the applicant's behalf

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~~must sign the application.~~

Source: The provisions of this §305.44 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.45. Contents of Application for Permit

(a) Forms for permit applications will be made available by the executive director. Each application for permit shall include the following:

(1) the name, mailing address, and location of the facility for which the application is submitted;

(2) the ownership status as federal, state, private, public, or other entity;

(3) the applicant's name, mailing address, and telephone number;

(4) a brief description of the nature of the business;

(5) the activities conducted by the applicant which require a permit;

(6) a topographic map, ownership map, county highway map, or a map prepared by a registered professional engineer or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth;

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(D) the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity;

(E) such other information that reasonably may be requested by the executive director;

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management program under the Texas Solid Waste Disposal Act;

(B) Underground Injection Control (UIC) Program under the Texas Injection Well Act;

(C) National Pollutant Discharge Elimination System (NPDES) Program under the Federal Clean Water Act (CWA) and Waste Discharge Program under the Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration (PSD) Program under the Federal Clean Air Act;

(E) Nonattainment Program under the Federal Clean Air Act;

(F) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the Clear Air Act;

(G) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) dredge or fill permits under of the Federal Clean Water Act;

~~(I) licenses under the Texas Radiation Control Act; and~~

(J) other environmental permits;

(8) Supplementary technical report. A supplementary technical report shall be submitted in connection with an application. The report shall be prepared either by a Texas registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report shall include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and

(ii) the physical, chemical, and radiological properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radiological properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved;

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(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit), §305.48 of this title (relating to Additional Contents of Applications for Waste Discharge Permits), §305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses), §336.207 of this title (relating to General Requirements for the Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Applications), and Chapter 330, Subchapter E of this title (relating to Municipal Solid Waste Permit Procedures).

(b) Only one application needs to be filed for each geographical location in which waste is or will be disposed of or discharged from, even though there may be more than one outfall, place of deposit, or other place of disposal covered in the application.

Source: The provisions of this §305.45 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 13, 1996, 21 TexReg 4999; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.47. Retention of Application Data

A permittee shall keep records, throughout the term of the permit, of data used to complete the final application and any supplemental information.

Source: The provisions of this §305.47 adopted to be effective June 19, 1986, 11 TexReg 2593.

§ 305.48. Additional Contents for Applications for Wastewater Discharge Permits

(a) The following shall be included in an application for a wastewater discharge permit.

(1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director, and shall be accompanied by a like number of copies of all technical supplements and attachments.

(2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information. This subsection does not apply to:

(A) an application to renew a permit; and

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including, but not limited to, the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands;

(C) up to four standard industrial codes (SIC) which best reflect the principal products or services provided by the facility.

(b) The following regulations contained in 40 Code of Federal Regulations, Part 122, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference.

(1) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

(2) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only nonprocess wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standards Permit Conditions for Waste Discharge Permits).

(3) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

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(e) In addition to the information required by §305.45 of this title (relating to Content of Application for Permit), an application by an individual for a waste discharge permit shall contain:

(1) the individual's full legal name and date of birth;

(2) the street address of the individual's place of residence;

(3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;

(4) the individual's sex; and

(5) any assumed business or professional name of the individual filed under Business and Commerce Code, Chapter 36.

Source: The provisions of this §305.48 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective January 7, 1994, 18 TexReg 9936; amended to be effective June 17, 1999, 24 TexReg 4441

§ 305.49. Additional Contents of Application for an Injection Well Permit

(a) The following shall be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.122 of this title (relating to Class III wells);

(3) the manner in which compliance with the financial assurance requirements of Chapter 37 of this title (relating to Financial Assurance) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Plugging and Abandonment Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

(6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in the Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

(1) mine plan;

(2) a restoration table;

(3) a baseline water quality table;

(4) control parameter upper limits;

(5) monitor well locations; and

(6) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(4)(B) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

Source: The provisions of this §305.49 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective January 5, 1988, 12 TexReg 4860; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051; amended to be effective March 21, 2000, 25 TexReg 2368

§ 305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided shall be sufficiently detailed and

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complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health and solid waste statutes. ~~Also to be submitted are listings of sites owned,~~ operated, or controlled by the applicant in the State of Texas. For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13–270.27, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

~~(B) An application for a permit to store, process,~~ or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information submitted to satisfy this subparagraph shall meet the requirements of subparagraph (C) or (D) of this ~~paragraph.~~

~~(C) For applicants possessing a resolution from a~~ governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph shall include the applicable items listed under clauses (i)–(vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles;

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~~(iii) for applicants for which audited financial~~ statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year;

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:

(I) descriptions of the business and its operations;

(II) identification of any affiliated relationships;

(III) credit agreements and terms;

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities; and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i)–(v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters ~~must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days~~ of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under subparagraph (D) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the EPA, that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment ~~to human health or the environment.~~

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14–270.27. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous

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waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment which is filed after January 1, 1986, which is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

~~(9) In the case of an application for a permit to~~ store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an ~~application for amendment or modification of a solid waste management facility permit to provide~~ for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) copies of any relevant land use plans, adopted in accordance with the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within 1/2 mile of the facility in the case of an application for a permit for a new on-site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this section.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous

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waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles traveling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles traveling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Natural Resource Conservation Commission, Texas Parks and Wildlife, General Land Office, Texas Department of Health, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I)–(XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities in accordance with §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the

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area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraph (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in 40 CFR §266.111) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) and (1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits).

Source: The provisions of this §305.50 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective January 5, 1988, 12 TexReg 4861; amended to be effective August 4, 1989, 14 TexReg 3531; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 7, 1991, 16 TexReg 6051; amended to be effective July 29, 1992, 17 TexReg 5016; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective May 11, 1994, 19 TexReg 3250; amended to be effective November20,1996, 21TexReg 10982; amended to be effective May 20, 1999, 24 TexReg 3725; amended to be effective March 21, 2000, 25 TexReg 2368; amended to be effective November 18, 2001, 26 TexReg 9130.

§ 305.51. Revision of Applications for Hazardous Waste Permits

(a) Owners or operators of hazardous waste management facilities, who qualify for interim status pursuant to 40 Code of Federal Regulation Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and who filed a Part A permit application pursuant to 40 Code of Federal Regulations §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:

(1) new hazardous wastes not identified in the original application are stored, processed or disposed of at the facility;

(2) increases in the design capacity of processes used at the facility occur;

(3) changes in the processes for management of the waste occur or additional processes are added;

(4) changes in the ownership or operational control of a facility are made; or

(5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 Code of Federal Regulations §270.72. For changes in the ownership or operational control of a facility, the new owner or operator shall submit a revised Part A permit application no later than 90 days prior to the scheduled change and shall also comply with the requirements set forth in 40 Code of Federal Regulations §270.72(d). A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of 40 Code of Federal Regulations (CFR) §265.193 for tanks and ancillary equipment;

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(2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of §3004(o) of the Resource Conservation and Recovery Act (RCRA), as amended;

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under §3008(h) of the RCRA, as amended, or other federal authority, by an authorized State under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized State, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 40 CFR, Part 268 or by §3004 of the RCRA, provided that such changes are made solely for the purpose of complying with 40 CFR, Part 268 or §3004 of the RCRA, as amended;

(7) addition of newly regulated units under subsection (a)(5) of this section; and

(8) changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

Source: The provisions of this §305.51 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5016; amended to be effective February 26, 1996, 21 TexReg 1137; amended to be effective December 5, 1999, 24 TexReg 10561

§ 305.52. Waste Containing Radioactive Materials

An application which involves the disposal of a waste containing radioactive materials shall be accompanied by a letter or other instrument in writing from the commission, the Texas Department of Health, or any other appropriate authority stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the commission, the Texas Department of Health, or any other appropriate authority governing waste containing radioactive materials; or that the applicant or the person served by the applicant does not need such a license. This section does not apply to applications under Chapter 336 of this title (relating to Radioactive Substance Rules).

Source: The provisions of this §305.52 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.53. Application Fee

(a) Except for radioactive material licenses or as specifically provided hereunder, an applicant shall include with each application a fee of $100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is $100. The fee for each disposal well which will be authorized to receive hazardous waste is $2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than $2,000 and not more than $50,000 as calculated in accordance with the following:

(A) site evaluation—$100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;

(B) process analysis—$1,000;

(C) facility unit(s) analysis—$500 per unit;

(D) management/facility analysis—$500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the $500 per unit fee; except that multiple storage tanks or container storage area identical in type and use will be subject to a single $500 unit fee.

(4) The permit application fee for water use permits shall be submitted in accordance with §§295.131–295.140 of this title (related to Water Use Permit Fees).

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (related to Procedures for Applications).

(6) The permit application fees for wastewater disposal permits shall not be less than $100 and not more than $2,000 as follows.

(A) Agricultural permit applications fees are as follows:

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~~further statements or data to enable the commission~~ to determine whether the application should be granted or denied or whether a license should be amended, renewed, or revoked.

(f) Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of low-level radioactive waste.

Source: The provisions of this §305.54 adopted to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 3, 1998, 23 TexReg 8837; amended to be effective September 14, 2000, 25 TexReg 8974

SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

§ 305.61. Applicability

The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of permits.

Source: The provisions of this §305.61 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.62. Amendment

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under ~~§305.70 of this title (relating to Municipal Solid Waste Class I Modifications)~~, under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. ~~If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title.~~ If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

~~(c) Types of amendments.~~

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit. In case of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), a major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes from other states not authorized in the existing license;

(C) authorizes a change in the operator of the facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency; or

(F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also ~~include, but is not limited to:~~

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(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination

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stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

Source: The provisions of this §305.62 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3513; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 13, 1996, 21 TexReg 4999; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective June 17, 1999, 24 TexReg 4441; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.63. Renewal

(a) ~~Any permit renewal application that is declared administratively complete before September 1, 1999 is subject to this section~~. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment or modification shall also be filed before further action is taken. ~~For applications filed under the Texas Water~~ Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application ~~for renewal.~~

(4) If renewal procedures have been initiated before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in § 305.66 of this title (relating to Revocation and Suspension).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by § 305.65 of this title (relating to Corrections of Permits), or § 305.62(d) of this title (relating to Amendment) provided the requirements of § 305.62(f) of this title (relating to Amendment) and § 305.96 of this title (relating to Action on Application for Amendment) are satisfied.

~~(7) The executive director may grant permission~~ for permittees of non-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations § 122.21(g)(10) after the permit expiration date.

(b) This section does not apply to applications for renewal of radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

Source: The provisions of this §305.63 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 23, 1999, 24 TexReg 8309

§ 305.64. Transfer of Permits

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) the name and address of the transferee;

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(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

~~(4) a fee of $100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fees);~~

(5) a sworn statement that the application is made with the ~~full~~ knowledge and consent of the permittee ~~if the transferee is filing the application; and~~

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not intended to relieve a transfer or of any liability.

~~(d) The executive director must be satisfied that~~ proof of any required financial responsibility is sufficient before transmitting an application for transfer ~~to the commission for further proceedings.~~

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

~~(f) The commission may refuse to approve a transfer~~ where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with ~~the requirements of Chapter 37, Subchapter P of~~ this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with Chapter 37, Subchapter P of this title, the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

(1) the permittee no longer owns the permitted facilities;

(2) the permittee is about to abandon or cease operation of the facilities;

(3) the permittee has abandoned or ceased operating the facilities; and

(4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) the permittee no longer owns or controls the permitted facilities;

(2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;

(3) the permittee has failed or is failing to comply with the terms and conditions of the permit;

(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar ~~proceedings have rendered the permittee unable to~~

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~~construct the permitted facilities or adequately per-~~form its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

Source: The provisions of this §305.64 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 19, 1989, 14 TexReg 3297; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective March 21, 2000, 25 TexReg 2368

§ 305.65. Renewal

Any permit renewal application that is declared administratively complete on or after September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment or modification shall also be filed before further action is taken. For applications filed under the Texas Water Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

(4) If renewal procedures have been initiated ~~before the permit expiration date, the existing permit~~ will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Revocation and Suspension).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §50.145 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendment) provided the requirements of §305.62(f) of this title and §305.96 of this title (relating to Action on Application for Amendment) are satisfied.

(7) The executive director may grant permission for permittees of non-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations, §122.21(g)(10) after the permit expiration date.

(8) After complying with all applicable rules in Chapters 39, 50 and 55 of this title, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(A) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(i) was generated on-site; and

(ii) does not include waste generated from other waste transported to the site; or

(B) processing of hazardous waste if:

(i) the waste was generated on-site;

(ii) the waste does not include waste generated from other waste transported to the site; and

(iii) the processing does not include thermal processing.

(9) If the commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

Source: The provisions of this §305.65 adopted to be effective September 23, 1999, 24 TexReg 8309; amended to be effective ~~September 14, 2000, 25 TexReg 8974~~

§ 305.66. Permit Denial, Suspension, and Revocation

(a) A permit or other order of the commission does not become a vested right and may be suspended or revoked for good cause at any time by order of the commission after opportunity for a public hearing is given. Good cause includes, but is

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not limited to, the following:

(1) the permittee has failed or is failing to comply with the conditions of the permit or a commission order, including failure to construct, during the life of the permit, facilities necessary to conform with the terms and conditions of the permit;

(2) the permit or the operations thereunder have been abandoned;

(3) the permit or other order is no longer needed by the permittee;

(4) the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time;

(5) a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm;

(6) the facility is being operated by a transferee before commission approval of the transfer;

~~(7) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed;~~

(8) for Class III injection wells, failure to achieve satisfactory restoration progress;

(9) for radioactive material licenses, any violation of the Texas Radiation Control Act or Chapter 336 of this title (relating to Radioactive Substance Rules), or when conditions are revealed by an application, statement of fact, report, record, inspection, or other means, which would have warranted the commission's refusal to issue a license on an original ~~application; or~~

(10) such other cause sufficient to warrant termination or suspension of the authorization.

~~(b) The authority to discharge waste into or adjacent to the water in the state under a waste discharge permit is subject to cancellation or suspension under the Texas Water Code, §26.084.~~

(c) The commission may, for good cause, deny, amend, revoke, or suspend, after notice and hearing according to §305.68 of this title (relating to Action and Notice on Petition for Revocation and Suspension), any permit it issues or has authority to issue for a solid waste storage, processing, or disposal facility, for good cause, for reasons pertaining to public health, air or water pollution, land use, or for ~~violations of the Texas Solid Waste Disposal Act, or any other applicable laws or rules controlling the management of solid waste.~~

(d) When the executive director determines revocation or suspension proceedings are warranted, a petition requesting appropriate action may be filed by the executive director with the commission. A person affected by the issuance of a permit or other order of the commission may initiate proceedings for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.

~~(e) If the executive director or an affected person~~ intends to file a petition to revoke or suspend a permit, notice of the intention and a copy of the petition to be filed shall be personally served on or sent by registered or certified mail to the permittee at the last address of record with the commission. This notice shall be given at least 15 days before a petition for revocation or suspension is submitted to the executive director or filed with the commission for further proceedings. Failure to provide such notice shall not be jurisdictional. For radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules), only the executive director may file a petition to revoke or suspend a license.

(f) The commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if the commission finds after notice and hearing, that:

(1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;

(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;

(3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by a rule of the commission;

(5) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to ~~this title and the rules of the commission.~~

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(g) Before denying, suspending, or revoking a permit under this section, the commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by rule of the commission.

(h) The commission may not suspend a new commercial hazardous waste management permit on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

(i) For applications for new hazardous waste management facility permits, the commission may deny such an application if it determines that the facility is not compatible with local land use pursuant to §335.180 of this title (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

(j) For applications for new commercial hazardous waste management facility permits, the commission may not deny such an application on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

(k) For applications for any new commercial hazardous waste management facility permits, the commission shall not grant such an application if the applicant is without experience in the particular hazardous waste management technology and has not conspicuously stated that lack of experience in the application, and the commission shall not grant such an application unless the applicant provides a summary of its experience, pursuant to §305.50(12)(D) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit). The commission may not deny an application for a new commercial hazardous waste management facility permit solely on the basis of lack of experience of the applicant.

(l) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

Source: The provisions of this §305.66 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.67. Revocation and Suspension upon Request or Consent

(a) If a permittee no longer desires to continue a waste disposal activity or to dispose of waste under a permit, or is agreeable to a suspension of authorization to do so for a specified period of time, the permittee should file with the executive director a written request, or a written consent and waiver not later than 10 days following receipt of notice of the intention to file a petition under §305.66 of this title (relating to Revocation and Suspension).

(b) If a permittee requests or consents to the revocation or suspension of the permit, the executive director may revoke or suspend the permit without the necessity of a public hearing or commission action. The executive director shall notify the commission of each such revocation or suspension.

(c) Upon request of the applicant, the executive director may terminate a radioactive material license in accordance with this section, if the licensee has complied with the applicable decommissioning requirements under Chapter 336 of this title (relating to Radioactive Substance Rules).

Source: The provisions of this §305.67 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.68. Action and Notice on Petition for Revocation or Suspension

(a) In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission, notice of which shall be given to the permittee not less than 30 days prior to the hearing by certified mail, return receipt requested, of the time and place of the hearing. For permits or orders involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, public notice shall be given by publication, by mail and by radio broadcast, in accordance with §§305.102-305.104 of this title (relating to Notice by Publication; Notice by Mail; and Radio Broadcasts).

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that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §39.13 of this title (relating to Mailed Notice) within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, the Government Code, Chapter 2002.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR, Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 335, Subchapter H, Divisions 1 through 4 (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to RCRA Subtitle C management standards; and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR, Part 265 groundwater monitoring requirements and with Chapter 37 of this title (relating to Financial Assurance) on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet Title 40 Code of Federal Regulations (CFR) Part 63 Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of this subchapter.

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c), as amended through July 10, 2000 (65 FR 42292), before a permit modification can be requested under this section.

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(j) Military hazardous waste munitions storage, processing, and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) the facility is in existence as a hazardous waste facility, and the facility is already permitted to handle waste military munitions, on the date when waste military munitions become subject to hazardous waste regulatory requirements;

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(2) on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions; and

(3) the permittee submits a Class 2 modification request within 180 days of the date when the waste military munitions become subject to hazardous waste regulatory requirements.

(k) Appendix 1. The following appendix will be used for the purposes of this subchapter which relates to industrial and hazardous solid waste permit modification at the request of the permittee.

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Figure: 30 TAC §305.69(k)

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes	2
5. Schedule of compliance	
a. Changes in interim compliance dates, with prior approval of the executive director	1'
b. Extension of final compliance date	3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director	1'
7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) of this title (relating to Transfer of Permits) are followed	1'
~~8. Six-months-or-less extension of the construction period time limit applicable to commercial hazardous waste management units in accordance with §305.149(b)(2) or (4) of this title (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units)~~	~~2~~
9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit in accordance with §305.149(b)(3) or (4) of this title	3
10. Any extension in accordance with §305.149(b)(3) of this title of a construction period time limit for commercial hazardous waste management units which ~~has been previously authorized under §305.149(b)(2) of this title~~	~~3~~
11. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility)	1'
B. General Facility Standards	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations	1
b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods	1'
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	1'
d. Other changes	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations	1
b. Other changes	2
3. Changes in procedures for maintaining the operating record	1
4. Changes in frequency or content of inspection schedules	2

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5. Changes in the training plan:
   a. That affect the type or decrease the amount of training given to employees 2
   b. Other changes 1

6. Contingency plan:
   a. Changes in emergency procedures (i.e., spill or release response procedures) 2
   b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed 1
   c. Removal of equipment from emergency equipment list 2
   d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan 1

7. Construction quality assurance (CQA) plan:
   a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications 1
   b. Other Changes 2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater Protection

1. Changes to wells:
   a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system 2
   b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well 1

2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director ..... 1[1]

3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director ..... 1[1]

4. Changes in point of compliance 2

5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits (ACLs)):
   a. As specified in the groundwater protection standard 3
   b. As specified in the detection monitoring program 2

6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix 2

7. Compliance monitoring program:
   a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title, and §335.165 of this title (relating to Compliance Monitoring Program) 3
   b. Changes to a compliance monitoring program as required by §335.165(11) of this title, unless otherwise specified in this appendix 2

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8. Corrective action program:

a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title and §335.166 of this title (relating to Corrective Action Program) 3
b. Changes to a corrective action program as required by §335.166(8) of this title, unless otherwise specified in this appendix 2

D. Closure

1. Changes to the closure plan:

a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director ..... 1[1]
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director ..... 1[1]
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director ..... 1[1]
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director ..... 1[1]
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix 2
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 Code of Federal Regulations (CFR), 264.113(d) and (e) 2

2. Creation of a new landfill unit as part of closure 3

3. Addition of the following new units to be used temporarily for closure activities:

a. Surface impoundments 3
b. Incinerators 3
c. Waste piles that do not comply with 40 CFR 264.250(c) 3
d. Waste piles that comply with 40 CFR 264.250(c) 2
e. Tanks or containers (other than specified below) 2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director ..... 1[1]
g. Staging Pile 2

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan 1
2. Extension of post-closure care period 2
3. Reduction in the post-closure care period 3
4. Changes to the expected year of final closure, where other permit conditions are not changed 1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure 2

F. Containers

1. Modification or addition of container units:

a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix 3
b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix 2

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c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1'

2. Modification of container units, as follows:

a. Modification of a container unit without increasing the capacity of the unit 2
b. Addition of a roof to a container unit without alteration of the containment system.....1

3. Storage of different wastes in containers, except as provided in F(4) of this appendix:

a. That require additional or different management practices from those authorized in the permit.....3
b. That do not require additional or different management practices from those authorized in the permit 2

Note: See §305.69(g) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1'
b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation).....2

G. Tanks

1. Modification or addition of tank units or treatment processes, as follows:

a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) of this appendix 3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) of this appendix 2
c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 2
d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation .....1'
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1'

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2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit 2

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided 1

   a. The capacity difference is no more than 1,500 gallons;
   b. The facility's permitted tank capacity is not increased; and
   c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice 2

5. Management of different wastes in tanks:

   a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) of this appendix 3
   b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) of this appendix 2
   c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) ..... 1'
   d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity 3

2. Replacement of a surface impoundment unit 3

3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system 2

4. Modification of a surface impoundment management practice 2

5. Treatment, storage, or disposal of different wastes in surface impoundments:

   a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit 3
   b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit 2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

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d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

6. Modifications of unconstructed units to comply with §§264.221(c), 264.222, 264.223, and 264.226(d) of this title.....1

7. Changes in response action plan:

a. Increase in action leakage rate.....3
b. Change in a specific response reducing its frequency or effectiveness.....3
c. Other Changes.....2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill.

The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).

1. Modification or addition of waste pile units:

a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.....3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity.....2

2. Modification of waste pile unit without increasing the capacity of the unit.....2

3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.....1

4. Modification of a waste pile management practice.....2

5. Storage or treatment of different wastes in waste piles:

a. That require additional or different management practices or different design of the unit.....3
b. That do not require additional or different management practices or different design of the unit.....2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

6. Conversion of an enclosed waste pile to a containment building unit.....2

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.....3

2. Replacement of a landfill.....3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....3

4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....2

5. Modification of a landfill management practice.....2

6. Landfill different wastes:

a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....2

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c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

7. Modifications of unconstructed units to comply with §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 of this title ..... 1'

8. Changes in response action plan:

a. Increase in action leakage rate 3
b. Change in a specific response reducing its frequency or effectiveness 3
c. Other changes 2

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent 3

2. Modification of run-on control system 2

3. Modify run-off control system 3

4. Other modifications of land treatment unit component specifications or standards required in the permit 2

5. Management of different wastes in land treatment units:

a. That require a change in permit operating conditions or unit design specifications 3
b. That do not require a change in permit operating conditions or unit design specifications 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:

a. Increase rate or change method of waste application 3
b. Decrease rate of waste application 1

7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions 2

8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops 3

9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2) 3

10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements 3

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11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements 2

12. Changes in background values for hazardous constituents in soil and soil-pore liquid 2

13. Changes in sampling, analysis, or statistical procedure 2

14. Changes in land treatment demonstration program prior to or during the demonstration 2

15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received ..... 1'

16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director ..... 1'

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration 3

18. Changes in vegetative cover requirements for closure 2

L. Incinerators, Boilers and Industrial Furnaces

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3

2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 2

3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl_2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3

4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards 2

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5. Operating requirements:

   a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
   b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls 3
   c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit 2

6. Burning different wastes:

   a. If the waste contains a principal organic hazardous constituent (POHC) that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
   b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly regulated wastes and units.

7. Shakedown and trial burn:

   a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn 2
   b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director 1*
   c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director 1*
   d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director 1*

8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit 1

9. Technology changes needed to meet standards under Title 40 CFR Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), provided the procedures of §305.69(l) of this title are followed 1*

M. Corrective Action

1. Approval of a corrective action management unit pursuant to 40 Code of Federal Regulations §264.552 3

2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 Code of Federal Regulations §264.553 2

3. Approval of a staging pile or staging pile operating term extension pursuant to 40 Code of Federal Regulations §264.554 2

N. Containment Buildings

1. Modification or addition of containment building units:

   a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity 3
   b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity 2

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2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit 2

3. Replacement of a containment building with a containment building that meets the same design standards provided:

   a. The unit capacity is not increased 1
   b. The replacement containment building meets the same conditions in the permit 1

4. Modification of a containment building management practice 2

5. Storage or treatment of different wastes in containment buildings:

   a. That require additional or different management practices 3
   b. That do not require additional or different management practices 2

Source: The provisions of this §305.69 adopted to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5090; amended to be effective June 7, 1993, 18 TexReg 3290; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 22, 1994, 19 TexReg 941; amended to be effective November 7, 1994, 19 TexReg 8543; amended to be effective April 17, 1995, 20 TexReg 2392; amended to be effective February 26, 1996, 21 TexReg 1137; amended to be effective August 8, 1999, 24TexReg5879;amended to be effective March 21, 2000, 25 TexReg 2368; amended to be effective April 12, 2001, 26 TexReg 2739; amended to be effective November 15, 2001, 26 TexReg 9123.

~~§ 305.70. Municipal Solid Waste Permit and Registration Modifications~~

(a) This section applies only to modifications to municipal solid waste (MSW) permits and registrations related to regulated MSW activities. Modifications to industrial and hazardous solid waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Changes to conditions in an MSW permit or registration which were specifically ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section. The effective date of the repeal of existing §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) and replacement with this new §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) is June 3, 2002. Applications for modifications filed before this new section becomes effective, will be subject to the section as it existed prior to June 3, 2002.

(b) References to the term "permit" in this section include the permit document and all of the attachments thereto as further defined in 30 TAC Chapter 330, Subchapter E, §§330.50–330.64 of this title (relating to Permit Procedures). References to the term "registration" in this section include the registration document and all of the attachments thereto as further defined in Chapter 330, Subchapter E of this title.

(c) Except as provided in subsection (k) of this section, any increase in the landfill capacity authorized for waste disposal or any increase in the permitted or registered daily maximum limit of waste acceptance shall be subject either to the requirements of §305.62(c)(1) of this title (relating to Amendment) in the case of a permitted facility, or to the requirements of a new registration in the case of a registered facility.

(d) Permit and registration modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment.

(e) A permittee or registrant may implement a modification to an MSW permit or registration provided that the permittee or registrant has received prior written authorization for the modification from the executive director. In order to receive prior written authorization, the permittee or registrant must submit a modification application to the executive director which includes, at a minimum, the following information:

(1) a description of the proposed change;

(2) an explanation detailing why the change is necessary;

(3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of a permit or a registration (i.e., a site development plan, site operating plan, engineering report, or any other approved plan attached to a permit or a registration document). These revisions shall be marked and include revision dates and notes as necessary in accordance with §330.51(e)(4) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.64(b) and (c) of this title (relating to Additional Standard Permit Conditions for

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(c) Renewal applications for permits expiring on or after September 1, 1995, shall be due at least 180 days before the expiration date of the effective permit. The executive director may grant permission for a later date; however, applications must be submitted prior to the expiration date of the permit.

(d) The executive director may require submission of a renewal application sooner than the dates set out in subsections (b) and (c) of this section upon a determination that a particular waste disposal activity necessitates a more frequent evaluation.

(e) Permits generally will be issued to maintain a five-year cycle of the expiration date schedule in subsection (b) of this section. The commission may issue a permit for less than a five-year term if it determines that a shorter term is necessary.

Source: The provisions of this §305.71 adopted to be effective January 17, 1995, 20 TexReg 19; amended to be effective June 17, 1999, 24 TexReg 4441

§ 305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee

(a) This section applies only to Underground Injection Control permits.

(b) With the permittee's consent, the executive director may modify administratively a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures and notice requirements of this chapter. Any change to the permit not processed as a minor modification under this section must be made for cause and in compliance with appropriate public notice requirements. Minor modifications may only:

(1) Correct typographical errors;

(2) Require more frequent monitoring or reporting by the permittee;

(3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and in the judgement of the executive director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;

(5) Change construction requirements, provided that the alterations comply with the requirements of Chapter 331 of this title (relating to Underground Injection Control); or

(6) Amend a plugging and abandonment plan which has been updated under §305.154(7) of this title (relating to Standards).

Source: The provisions of this §305.72 adopted to be effective February 11, 1997, 22 TexReg 1169.

SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

§ 305.121. Applicability

The provisions of this subchapter establish the characteristics and standards for permits issued for injection wells, waste discharge, radioactive material disposal, and solid waste management, including sewage sludge.

Source: The provisions of this §305.121 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.122. Characteristics of Permits

(a) Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) become effective by statute;

(2) are promulgated under 40 Code of Federal Regulations (CFR) Part 268, restricting the placement of hazardous wastes in or on the land;

(3) are promulgated under 40 CFR Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance programs, monitoring, action leakage rates, and response action plans, and will be implemented through the Class 1 permit modifications procedures of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); or

(4) are promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112 of this title (relating to Standards).

(b) A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(c) The issuance of a permit does not authorize any injury to persons or property or an invasion of

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other property rights, or any infringement of state or local law or regulations.

(d) Except for any toxic effluent standards and prohibitions imposed under Clean Water Act (CWA), §307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in §§305.62 and 305.66 of this title (relating to Amendment; and Permit Denial, Revocation and Suspension.)

Source: The provisions of this §305.122 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 26, 1996, 21 TexReg 1137; amended to be effective November 15, 2001, 26 TexReg 9123.

§ 305.123. Reservation in Granting Permit

Every permit is subject to further orders and rules of the commission. In accordance with the procedures for amendments and orders, the commission may incorporate into permits already granted any condition, restriction, limitation, or provision reasonably necessary for the administration and enforcement of Texas Water Code, Chapters 26, 27, and 28, and the Texas Health and Safety Code, Chapters 361 and 401.

Source: The provisions of this §305.123 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective September 14, 2000, 25 TexReg 8974.

§ 305.124. Acceptance of Permit, Effect

Acceptance of the permit by the person to whom it is issued constitutes an acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the commission.

Source: The provisions of this §305.124 adopted to be effective June 19, 1986, 11 TexReg 2597.

§ 305.125. Standard Permit Conditions

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are as follows.

(1) The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

(2) The permittee must apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity terminates upon the effective denial of said application.

(3) It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions. For Underground Injection Control permits, proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit, and copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director before physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) Such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission shall also be provided within five days of the

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time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(B) The following must be reported within 24 hours under this paragraph.

(i) any unanticipated bypass which exceeds any effluent limitation in a TPDES permit.

(ii) violation of a maximum daily discharge limitation for any pollutants listed in a TPDES permit to be reported within 24 hours.

~~(C) Holders of radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules) shall report noncompliances/incidents to the executive director according to the requirements of §336.335 of this title (relating to Reporting Requirements for Incidents).~~

(10) Inspection and entry shall be allowed under Texas Water Code, Chapters 26 - 28, Texas Health and Safety Code, §§361.032–361.033, 361.037, and 401.063, and 40 Code of Federal Regulations (CFR), §122.41(i). The statement in Texas Water Code, §26.014 that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are as follows.

(A) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(B) Except ~~as otherwise required by Chapter 336 of this title~~ or for records of monitoring information required by a permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period shall be extended at the request of the executive director.

(C) Records of monitoring activities shall include:

(i) date, time and place of sample or measurement;

(ii) identity of individual who collected the sample or made the measurement;

(iii) date of analysis;

(iv) identity of the individual and laboratory who performed the analysis;

(v) the technique or method of analysis; and

(vi) the results of the analysis or measurement.

(12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly shall be reported to the executive director as promptly as possible.

(13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits) and §305.97 of this title (relating to Action on Application for Transfer).

(14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by §305.128 of this title (relating to Signatories to Reports).

(15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(16) A permit does not convey any property rights of any sort, or any exclusive privilege.

(17) Monitoring results shall be provided at the intervals specified in the permit.

(18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

(19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application, or in any report to the executive director, it shall promptly submit such facts or information.

~~(20) The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code, §§26.136, 26.212, and 26.213 for~~

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violations including but not limited to the following:

(A) negligently or knowingly violating CWA, §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, §402, or any requirement imposed in a pretreatment program approved under CWA, §402(a)(3) or (b)(8);

(B) falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under a permit; or

(C) knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.

(21) For hazardous waste management facility permits, the executive director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR, §124.33(b), as amended through December 11, 1995, at 60 FedReg 63417. The information repository will be governed by the provisions in 40 CFR §124.33(c)–(f), as amended through December 11, 1995, at 60 FedReg 63417.

(22) Notice of bankruptcy.

(A) Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

(i) the permittee;

(ii) an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or

(iii) an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.

(B) This notification must indicate:

(i) the name of the permittee;

(ii) the permit number(s);

(iii) the bankruptcy court in which the petition for bankruptcy was filed; and

(iv) the date of filing of the petition.

Source: The provisions of this §305.125 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3513; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective August 8, 1999, 24 TexReg 5879; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.126. Additional Standard Permit Conditions for Waste Discharge Permits

(a) Whenever flow measurements for any sewage treatment plant facility in the state reaches 75% of the permitted average daily or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily or annual average flow reaches 90% of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75% of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the enforcement division of the commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

(b) The permittee shall give notice to the executive director as soon as possible of any planned physical alterations or additions to the permitted facility. In addition to the requirements of §305.125(7) of this title (relating to Standard Permit Conditions), notice shall also be required under this subsection when:

(1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §305.534 of this title (relating to New Sources and New Dischargers); or

(2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 Code of Federal Regulations (CFR) §122.42(a)(1) as adopted by §305.531 of this title (relating to Establishing and Calculating Additional Condi-

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tions and Limitations for TPDES Permits);

(3) the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(c) If the permittee is a new discharger, it must provide quantitative data described in 40 CFR §122.21(h)(4)(I) and (ii) no later than two years after commencement of discharge; however, the permittee need not conduct tests which the permittee has already performed and reported under the discharge monitoring requirements of its TPDES permit.

Source: The provisions of this §305.126 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective June 25, 1990, 15 TexReg 3416; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective April 24, 1995, 20 TexReg 2708; amended to be effective December 27, 1998, 23 TexReg 12930.

§ 305.127. Conditions To Be Determined for Individual Permits

Conditions to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable, incorporated into the permit expressly or by reference, are:

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I and Class V wells shall be for a fixed term not to exceed ten years.

(ii) Permits for Class III wells or projects may be for the life of the well or project, and shall be reviewed at least once every five years.

(B) Solid waste permits.

(i) Hazardous waste permits shall be for a fixed term not to exceed ten years.

(ii) Other solid waste permits may be for the life of the project.

(iii) Each permit for a land disposal facility used to manage hazardous waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

(C) Waste discharge permits.

(i) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be for a term not to exceed five years.

(ii) All other permits shall be as follows:

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be for a term not to exceed five years.

(II) Confined animal feeding operation permits may be for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems, shall be for a term not to exceed ten years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be for a term not to exceed ten years.

(E) Term of permit. The term of a permit shall not be extended by amendment beyond the maximum duration specified in this section.

(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit, for a duration less than the full allowable term under this section.

(G) Radioactive material licenses.

(i) Licenses issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be for a fixed term not to exceed 20 years.

(ii) Other radioactive material licenses shall be for a fixed term not to exceed ten years.

(2) Monitoring, recording, and reporting.

(A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.

(B) The type, intervals, and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.

(C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate law, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit. For TPDES permits the schedule of compliance shall require compliance not later than authorized by

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Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

(C) Reporting requirements for each schedule of compliance shall be specified by the commission as appropriate. Reports of progress and completion shall be submitted to the executive director no later than 14 days after each schedule date.

(D) For TPDES permits the following additional conditions apply:

(i) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge.

(ii) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(iii) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the permit schedule shall set forth interim requirements and the dates for their achievement.

(E) For UIC permits, the time for compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit. Except as provided in clause (iii)(I)(-b-) of this subparagraph, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(iii) A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows:

(I) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(-a-) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(-b-) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(II) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the cessation date, the permit shall contain a schedule leading to cessation of activities which will ensure timely compliance with applicable requirements.

(III) If the permittee is undecided whether to cease conducting regulated activities, the executive director may issue or modify a permit to contain two schedules as follows:

(-a-) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(-b-) One schedule shall lead to timely compliance with applicable requirements;

(-c-) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(-d-) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under item (-a-) of this subclause, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to cessation if the decision is to cease conducting regulated activities.

(IV) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the executive director, such as a resolution of the board of directors of a corporation.

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to

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reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment. Reference is made to Chapter 330 of this title (relating to Municipal Solid Waste) for municipal solid waste facility standards, to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards, to Chapter 309 of this title (relating to Effluent Standards) for waste discharge standards, and to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.

(B) Any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a permit or prior to the amendment, modification, or suspension and reissuance of a permit shall be included in the permit.

(C) New, amended, modified, or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title for injection well standards, Chapter 335 of this title for solid waste facility standards, Chapter 336 of this title (relating to Radioactive Material Disposal Standards), Chapter 309 of this title for waste discharge standards, and Chapter 329 of this title for drilled or mined shaft standards.

(5) Wastes authorized.

(A) Injection well permits. Each category of waste to be disposed of by injection well shall be authorized in the permit.

(B) Drilled or mined shaft permits. Each category of waste to be handled, stored, processed, or disposed of in a drilled or mined shaft, or in associated surface facilities shall be authorized in the permit.

(C) Unauthorized wastes. Wastes not authorized by permit are prohibited from being transported to, stored, and processed or disposed of in a permitted facility.

(6) Permit conditions. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or requirements must be given in the permit.

Source: The provisions of this §305.127 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 13, 1996, 21 TexReg 4999; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.128. Signatories to Reports

(a) All reports requested by permits and other information requested by the executive director shall be signed by a person described in §305.44(a) of this title (relating to Signatories to Applications) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) the authorization is made in writing by a person described in §305.44(a) of this title (relating to Signatories to Applications);

(2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the applicant, such as the position of plant manager, operator of a well or well field, environmental manager, or a position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) the written authorization is submitted to the executive director.

(b) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(c) Any person signing a report required by a permit shall make the certification set forth in §305.44(b) of this title (relating to Signatories to Applications).

Source: The provisions of this §305.128 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

§ 305.129. Variance Procedures

The following regulations contained in 40 Code of Federal Regulations, which are in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, are adopted by reference:

(1) Part 122, Subpart B—Permit Applications and Special National Pollutant Discharge Elimination System (NPDES) Program Requirements, §122.21(m), providing requirements for variance requests by nonpublicly owned treatment works;

(2) Part 122, Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(n),

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providing requirements for various requests by publicly owned treatment works (POTWs);

(3) Part 122, Subpart C—Permit Applications and Special NPDES Program Requirements, §122.21(o), providing requirements for expedited variance procedures and time extensions;

(4) Part 124, Subpart D—Specific Procedures Applicable to NPDES Permits, §124.62, providing decision-making procedures for variances.

Source: The provisions of this §305.129 adopted to be effective October 8, 1990, 15 TexReg 5492.

SUBCHAPTER G. ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

§ 305.141. Applicability

(a) Unless otherwise stated, the conditions contained in this subchapter apply to all hazardous and industrial solid waste storage, processing, or disposal permits. These conditions are in addition to those set forth in §305.66 of this title (relating to Revocation and Suspension).

(b) In addition to the conditions established under §305.127(4) of this title (relating to Conditions to be Determined for Individual Permits), each permit for a facility used for the storage, processing, and disposal of hazardous waste shall include:

(1) each of the applicable requirements specified in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities); and

(2) a list of the wastes or classes of wastes which will be processed, stored, or disposed of at the facility, and a description of the processes to be used for the processing, storage, or disposal of such hazardous wastes at the facility, including the design capacity of each storage, processing, and disposal unit. Except in the case of containers, the description must identify the particular wastes or classes of wastes which will be processed, stored, or disposed of in particular equipment or locations (e.g., halogenated organics may be stored in Tank A and metal hydroxide sludges may be disposed of in landfill cells B, C, and D).

Source: The provisions of this §305.141 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective June 13, 1996, 21 TexReg 4999.

§ 305.142. Duty To Comply

The permittee need not comply with the conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency order issued by the commission.

Source: The provisions of this §305.142 adopted to be effective June 19, 1986, 11 TexReg 2597.

§ 305.143. Recordkeeping

For those permits containing a groundwater monitoring requirement, the permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations for the active life of the facility and for disposal facilities for the post-closure care period as well.

Source: The provisions of this §305.143 adopted to be effective June 19, 1986, 11 TexReg 2597.

§ 305.144. Certification and Inspection

For a new facility, the permittee may not commence storage, processing, or disposal of solid waste; and for a facility being modified, the permittee may not process, store, or dispose of solid waste in the modified portion of the facility, except as provided in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) until:

(1) the permittee has submitted to the executive director by certified mail or hand delivery a letter signed by the permittee and a Texas registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(2) the executive director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or if within 15 days of submission of the letter required by paragraph (1) of this section, the permittee has not received notice from the executive director of an intent to inspect, prior inspection is waived, and the permittee may commence processing, storage, or disposal of solid waste.

Source: The provisions of this §305.144 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.145. Release or Discharges of Solid Waste

(a) The following shall be included as information which must be reported orally within 24 hours pursuant to §305.125(9) of this title (relating to Standard Permit Conditions):

(1) information concerning release of any solid waste that may cause an endangerment to public drinking water supplies;

(2) any information of a release or discharge of solid waste, or of a fire or explosion from a facility, which could threaten the environment or human health or safety outside the facility. The description

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of the occurrence and its cause shall include:

(A) name, address, and telephone number of the owner or operator;

(B) name, address, and telephone number of the facility;

(C) date, time, and type of incident;

(D) name and quantity of material(s) involved;

(E) the extent of injuries, if any;

(F) an assessment of actual or potential hazards to the environment and human health or safety outside the facility, where this is applicable; and

(G) estimated quantity and disposition of recovered material that resulted from the incident.

(b) The executive director may waive the five-day written notice requirement under §305.125(9) of this title (relating to Standard Permit Conditions) in favor of a written report pursuant to this section within 15 days.

Source: The provisions of this §305.145 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective April 8, 1987, 12 TexReg 998.

§ 305.147. Monitoring of Commercial Hazardous Waste Management Facility Operations

Any issued, amended, modified, transferred, extended, or renewed commercial hazardous waste management facility permit shall include the following requirements.

(1) Within the first year after commission action on the permit the facility owner or operator shall provide notice to affected persons of intent to have an independent annual environmental audit of the facility performed. The notice shall be issued in accordance with the following procedure.

(A) The notice shall state the names of at least three independent inspectors nominated by the facility owner or operator to perform the environmental audit and shall be published in the newspaper of the largest general circulation that is published in the county in which the facility is located and all adjacent counties or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The facility owner or operator shall not nominate an inspector who is employed or who has been employed by the facility.

(B) The notice shall announce a meeting time and place, to be located near the facility location, be held within 15 days of the published notice in order for the facility to receive comments from and allow for participation by interested affected persons in the selection of the independent inspector. The interested affected persons may either agree to one of the nominated independent inspectors or nominate other independent inspectors if they do not approve of the nominee list. The selection of the independent inspector shall be agreed to by the facility owner or operator and the interested affected persons no later than 30 days from the date of the meeting. The name of the selected independent inspector shall be submitted to the commission no later than 15 days from the date of selection for the commission's approval. The commission shall approve the independent inspector after it has determined that the independent inspector has the necessary expertise to perform the audit and does not have a conflict of interest with any of the parties involved in the inspector selection.

(C) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(i) the facility owner's or operator's name;

(ii) the location of the facility;

(iii) the facility permit number;

(iv) the time and date of the scheduled annual environmental audit;

(v) the names of at least three nominated independent inspectors;

(vi) the date and time and location of the selection meeting; and

(vii) the name and telephone number of a facility contact person.

(D) The facility owner or operator shall provide a copy of the published notice to local jurisdictions where the facility is located.

(E) The facility owner or operator shall provide the commission with an affidavit including a newspaper tear sheet of the published notice and sworn statement of the editor or publisher certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(2) If the facility owner or operator and interested affected persons cannot agree on the selection of an independent inspector within the time frame specified in paragraph (1)(B) of this section, the commission shall select an independent inspector. The commission's selection, however, shall not be limited to either the facility owner or operator's nominee list or the interested affected persons' nominee list. The commission shall take steps necessary to assure that

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Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.

(A) Extension requests made under this paragraph shall be submitted during the periods authorized under paragraph (1) or (2) of this subsection. Construction of the unit is authorized under this subsection until the commission takes final action on the modification request.

(B) The commission shall not consider requests made under this paragraph which are submitted after the expiration of the time periods authorized under paragraph (1) or (2) of this subsection.

(4) Under circumstances which require a delayed or staged unit construction schedule longer than that specified under paragraph (1) of this subsection, justification for the proposed extended schedule shall be submitted with the permit application. The submitted schedule shall become part of the permit only upon the approval of the commission. Requests for changes to the approved schedule submitted during the period covered by the approved schedule shall comply with Class 2 or Class 3 permit modification rules, pursuant to §305.69. The class of the modification shall be determined by the length of the extension requested. An extension request of six months or less shall be a Class 2 modification and an extension request of greater than six months shall be a Class 3 modification request. All requests and subsequent procedures must comply with applicable provisions of §305.69 and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.

(c) Authorization status. Unit construction or management of hazardous waste in a unit is not authorized under any of the following conditions:

(1) the permittee has not constructed the unit within the time period specified under subsection (b)(1) of this section and:

(A) the permittee does not submit a modification request as specified in subsection (b)(2) or (3) of this section; or

(B) the commission has denied a request for an extension under subsection (b)(2) or (3) of this section and the construction period time limit specified in subsection (b)(1) or (2) of this section has expired;

(2) the unit has not been constructed within the time period specified in the permit as per subsection (b)(4) of this section and:

(A) the permittee does not submit a modification request as specified in subsection (b)(4) of this section; or

(B) the commission has denied a request for an extension under subsection (b)(4) of this section and the construction period time limit specified in the permit has expired.

Source: The provisions of this §305.149 adopted to be effective November 23, 1994, 19 TexReg 8863.

§ 305.150. Incorporation of References

When used in this chapter (relating to Consolidated Permits), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended through May 14, 1999 (64 FR 26315).

Source: The provisions of this §305.150 adopted to be effective November 20, 1996, 21 TexReg 10982; amended to be effective November 15, 2001, 26 TexReg 9123.

SUBCHAPTER H. ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

§ 305.151. Applicability

Unless stated otherwise, the following conditions apply to all Class I, Class III, and Class V injection well permits and shall be incorporated into the permit expressly or by reference. These conditions are in addition to those set forth in §§305.121-305.128 of this title (relating to Permit Characteristics and Conditions).

Source: The provisions of this §305.151 adopted to be effective June 19, 1986, 11 TexReg 2598; amended to be effective February 11, 1997, 22 TexReg 1169.

§ 305.152. Corrective Action

For Class I and III wells only:

(1) For wells within the area of review which are inadequately constructed, completed, or abandoned, and which as a result of the injection activities may cause the pollution of fresh water, the commission shall prescribe or incorporate into the permit conditions requiring corrective action adequate to prevent such pollution. Corrective action will be required unless the owner or operator demonstrates to the executive director that, despite the owner or operator's best efforts, he is unable to obtain the necessary permission to undertake such action.

(2) The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.

(3) A permit issued for an existing injection well requiring corrective action shall include a compli-

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~~(1) A sign shall be posted at the well site which~~ shall show the name of the company, company well number and commission permit number. The sign and identification shall be in the English language, clearly legible, and shall be in numbers and letters at least one inch high.

(2) An all-weather road shall be installed and maintained to allow access to the injection well and related facilities.

(3) The wellhead and associated facilities shall be painted, if appropriate, and maintained in good working order without leaks.

~~Source: The provisions of this §305.159 adopted to be effective June 19, 1986, 11 TexReg 2598.~~

SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

§ 305.171. Determining Operational Readiness

For the purposes of determining operational readiness following completion of physical construction of a hazardous waste incinerator, the commission shall establish permit conditions including, but not limited to, specification of allowable waste feeds and operating conditions, in a permit for a new hazardous waste incinerator. These permit conditions will be effective for a minimum required time, not to exceed 720 hours operating time for treatment of hazardous waste, to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn. The commission may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension pursuant to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(1) Applicant must submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations §284.343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in 40 Code of Federal Regulations §264.345.

(2) The executive director shall review this statement and any other relevant information submitted with Part B of the permit application and shall specify requirements for this period sufficient to meet the performance standards of 40 Code of Federal Regulations §264.343, based on the executive director's engineering judgment.

Source: The provisions of this §305.171 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.172. Determining Feasibility of Compliance and Adequate Operating Conditions

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 CFR §264.345, the commission shall establish conditions in the permit for a new hazardous waste incinerator, to be effective during the trial burn.

(1) Applicant shall propose a trial burn plan, prepared under paragraph (2) of this section, with Part B of the permit application.

(2) The trial burn plan shall include the following information:

(A) an analysis of each waste or mixture of wastes to be burned which includes:

(i) heat value of the waste in the form and composition in which it will be burned;

(ii) viscosity (if applicable), or description of physical form of the waste;

(iii) an identification of any hazardous organic constituents listed in 40 CFR Part 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, which reasonably would not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for their exclusion established. The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent; and

(iv) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent;

(B) a detailed engineering description of the incinerator for which the permit is sought, including:

(i) manufacturer's name and model number of incinerator (if available);

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(ii) type of incinerator;

(iii) linear dimensions of the incinerator unit, including the cross-sectional area of combustion chamber;

(iv) description of the auxiliary fuel system (type/feed);

(v) capacity of prime mover;

(vi) description of automatic waste feed cut-off system(s);

(vii) stack gas monitoring and pollution control equipment;

(viii) nozzle and burner design;

(ix) construction materials; and

(x) location and description of temperature, pressure, and flow indicating and control devices;

(C) a detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(D) a detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the decision under paragraph (5) of this section;

(E) a detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;

(F) a description of, and planned operating conditions for, any emission control equipment which will be used;

(G) procedures for rapidly stopping the waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and

(H) such other information as the executive director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (5) of this section.

(3) The executive director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section.

(4) Based on the waste analysis data in the trial burn plan, the commission shall specify as trial principal organic hazardous constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the commission based on an estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and for wastes listed in 40 CFR Part 261, Subpart D, the hazardous waste organic constituent or constituents identified in Appendix VII of that part as the basis for listing.

(5) The commission shall approve a trial burn plan if it finds that:

(A) the trial burn is likely to determine whether the incinerator performance standard required by 40 CFR §264.343 can be met;

(B) the trial burn itself will not present an imminent hazard to human health or safety or the environment;

(C) the trial burn will help the commission to determine the operating requirements to be specified (in the permit) according to 40 CFR §264.345; and

(D) the information sought in subparagraphs (A) and (C) of this paragraph cannot reasonably be developed through other means.

(6) The chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 Code of Federal Regulations §270.62(b)(6)(i)-(ii), as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

(7) During each approved trial burn (or as soon after the burn as practicable), the applicant must make the following determinations:

(A) a quantitative analysis of the trial POHCs in the waste feed to the incinerator;

(B) a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O_2) and hydrogen chloride (HCl);

(C) a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

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(D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR §264.343(a);

(E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with 40 CFR §264.343(b);

(F) a computation of particulate emissions, in accordance with 40 CFR §264.343(c);

(G) an identification of sources of fugitive emissions and their means of control;

(H) a measurement of average, maximum, and minimum temperatures and combustion gas velocity;

(I) a continuous measurement of carbon monoxide (CO) in the exhaust gas; and

(J) such other information as the executive director may specify as necessary to ensure that the trial burn will determine the compliance with the performance standards in 40 CFR §264.343 and to establish the operating conditions required by 40 CFR §264.345 as necessary to meet those performance standards.

(8) The applicant must submit to the executive director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in paragraph (7) of this section. This submission shall be made within 90 days of completion of the trial burn, or later with the prior approval of the executive director.

(9) All data collected during any trial burn shall be submitted to the executive director immediately following the completion of the trial burn.

(10) All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports).

(11) Based on the results of the trial burn, the commission or the executive director, as appropriate, subject to §50.33 of this title (relating to Executive Director Action on Application), shall set the operating requirements in the final permit according to 40 CFR §264.345. The permit amendment or modification shall proceed according to §305.62 of this title (relating to Amendment) or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

Source: The provisions of this §305.172 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective November 20, 1996, 21 TexReg 10982; amended to be effective August 8, 1999, 24 TexReg 5879

§ 305.173. Operation Prior to Final Amendment of the Permit

For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final amendment of the permit conditions to reflect the trial burn results, the commission may establish permit conditions, including, but not limited to, allowable waste feeds and operating conditions sufficient to meet the requirements of 40 Code of Federal Regulations §264.345, in the permit for a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation, and submission of the trial burn results by the applicant, and amendment of the facility permit by the commission.

(1) Applicants shall submit a statement with Part B of the permit application which identifies the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations §264.343, during the trial burn period. This statement shall include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in 40 Code of Federal Regulations §264.345.

(2) The executive director shall review this statement and any other relevant information submitted with Part B of the permit application, and shall specify those requirements for this period most likely to meet the performance standards of 40 Code of Federal Regulations §264.343, based on the executive director's engineering judgment.

Source: The provisions of this §305.173 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.174. Existing Incinerators

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 CFR §264.345, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with 40 CFR §270.19(b) and §305.172(2)-(5) and (7)-(10) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) or, instead, submit other information as specified in 40 CFR §270.19(c). The chief clerk shall provide notice of the executive director's intention to approve the trial burn, in

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accordance with the timing and distribution requirements of §305.172(6) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions). The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information specified in 40 CFR §270.19(a) are exempt from compliance with 40 CFR §§264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in §305.172 of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the executive director to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the executive director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

Source: The provisions of this §305.174 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective August 8, 1999, 24 TexReg 5879

§ 305.175. Conditional Exemption for Demonstrating Compliance with Certain Air Standards

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 Code of Federal Regulations Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

Source: The provisions of this §305.175 adopted to be effective November 15, 2001, 26 TexReg 9123.

SUBCHAPTER J. PERMITS FOR LAND TREATMENT DEMONSTRATIONS USING FIELD TESTS OR LABORATORY ANALYSES

§ 305.181. Treatment Demonstration Permit

For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of 40 Code of Federal Regulations §264.272, the commission may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in 40 Code of Federal Regulations §264.272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two phase facility permit covering the field tests or laboratory analyses, and the design, construction, operation, and maintenance of the land treatment unit.

(1) The commission may issue a two-phase facility permit if it finds that, based on information submitted in Part B of the application, substantial information, although incomplete or inconclusive, already exists upon which to base the issuance of a facility permit.

(2) If the commission finds that insufficient information exists upon which to establish permit conditions to attempt to provide for compliance with all of the requirements relating to land treatment, the commission may issue a treatment demonstration permit covering only the field test or laboratory analyses.

Source: The provisions of this §305.181 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.182. Two-Phase Facility Permit

If the commission finds that a phased permit may be issued, the commission shall establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions shall include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the commission finds may be necessary under 40 Code of Federal Regulations §264.272(c). The commission shall include conditions in the second phase of the facility permit to attempt to meet all requirements pertaining to unit design,

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construction, operation, and maintenance of land treatment facilities. The commission shall establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(1) The first phase of the permit shall be effective as provided in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

(2) The second phase of the permit shall be effective as provided in §305.184 of this title (relating to Permit Amendment).

Source: The provisions of this §305.182 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.183. Certification

When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he shall submit to the executive director a certification, signed by a person authorized to sign a permit application or report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports), that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the executive director approves a later date.

Source: The provisions of this §305.183 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.184. Permit Amendment or Modification

If the commission determines that the results of the field tests or laboratory analyses meet the requirements of 40 Code of Federal Regulations §264.272, it shall amend the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with requirements applicable to land treatment, based upon the results of the field tests or laboratory analyses.

(1) This permit amendment may proceed under §305.62 of this title (relating to Amendment) or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), provided any such change is minor, or otherwise will proceed as an amendment under §305.62(d) of this title (relating to Amendment). If such modifications or amendments are necessary, the second phase of the permit will become effective only after those modifications or amendments have been made.

(2) If not amendments of the second phase of the permit are not necessary, the commission shall give notice in accordance with §305.96(b) of this title (relating to Action on Application for Amendment or Modification). The second phase of the permit then will become effective as specified in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

Source: The provisions of this §305.184 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

SUBCHAPTER K. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

§ 305.191. Applicability and Scope

The commission may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 40 Code of Federal Regulations Parts 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health or safety and the environment. Such permits:

(1) shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in §305.194 of this title (relating to Renewal);

(2) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the commission deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and safety and the environment; and

(3) shall include such requirements as the commission deems necessary to protect human health and safety and the environment, including, but not limited to, requirements regarding monitoring, operation, financial responsibility closure, and remedial action, and such other requirements as the commission deems necessary regarding testing with respect to the operation of the facility and providing of information to the executive director.

Source: The provisions of this §305.191 adopted to be effective June 19, 1986, 11 TexReg 2601.

§ 305.192. Waiver of Requirements

For the purpose of expediting review and issuance of permits under this subchapter, the commission

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may, consistent with the protection of human health and safety and the environment, modify or waive permit application and permit issuance requirements of this chapter, except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

Source: The provisions of this §305.192 adopted to be effective June 19, 1986, 11 TexReg 2601; amended to be effective August 30, 1988, 13 TexReg 4071.

§ 305.193. Termination

The commission may order an immediate termination of all operations at a facility subject to this subchapter at any time the commission determines that termination is necessary to protect human health and safety and the environment.

Source: The provisions of this §305.193 adopted to be effective June 19, 1986, 11 TexReg 2601.

§ 305.194. Renewal

Any permit issued under this subchapter may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

Source: The provisions of this §305.194 adopted to be effective June 19, 1986, 11 TexReg 2601.

SUBCHAPTER L. GROUNDWATER COMPLIANCE PLAN

§ 305.401. Compliance Plan

~~(a) In order to administer the groundwater protection~~ requirements relating to compliance monitoring and corrective action for facilities that store, process, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills, and the requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), the commission shall establish a compliance plan.

(b) The following rules pertaining to application, and notice and hearing shall be applicable in proceedings to establish the plan: §39.3 of this title (relating to Purpose); §39.5 of this title (relating to General Provisions); §39.7 of this title (relating to Mailing Lists); §39.11 of this title (relating to Text of Public Notice); §39.13 of this title (relating to Mailed Notice); §39.17 of this title (relating to Notice of Minor Amendment); §39.21 of this title (relating to Notice of Commission Meeting to Evaluate a Hearing Request on an Application); §39.23 of this title (relating to Notice of Hearing Held by SOAH, ~~Including Hearing on Hearing Requests); §39.25 of this title (relating to Notice of Contested Enforcement~~ Case Hearing); §39.103 of this title (relating to Application for Industrial or Hazardous Waste Facility Permit); §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit); §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit); §39.109 of this title (relating to Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit); §50.13 of this title (relating to Action on Application); §50.15 of this title (relating to Scope of Proceedings); §50.17 of this title (relating to Commission Actions); §55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment); Chapter 281 of this title (relating to Applications Processing); §305.43 of this title (relating to Who Applies); §305.44 of this title (relating to Signatories to Applications); §305.47 of this title (relating to Retention of Application Data); §305.50 of this title (relating to Additional Requirements for an Application for a Solid Waste Permit); §305.53 of this title (relating to Application Fees); §305.122-§305.124 of this title (relating to Characteristics of Permits; Reservation in Granting Permit; and Acceptance of Permit, Effect); and §305.128 of ~~this title (relating to Signatories to Reports).~~

(c) Any investigation report to establish compliance monitoring or corrective action shall contain the information specified in the regulations contained in 40 Code of Federal Regulations, §270. 14(c)(7) and (8), which are in effect as of September 9, 1987. The executive director may authorize, in writing, in advance the submittal of a proposed permit schedule for the submittal of an engineering feasibility plan as set forth in the regulations contained in 40 Code of Federal Regulations, §270. 14(c)(7), which are in effect as of September 9, 1987. The executive director may also authorize, in writing, prior to the submittal of a complete permit application, the submittal of a schedule for the information required in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(8)(iii) and (iv), as set forth in the regulations contained in 40 Code of Federal Regulations, §.270.14(c) (8)(v), which are in effect as of September 9, 1987. The executive director may request information necessary to determine the appropriateness and extent of corrective action required by §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

~~(d) The executive director shall prepare a draft compliance plan unless the executive director rec-~~

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~~TPDES permit for a commercial aquaculture facility~~ located within the coastal zone and engaged in the production of shrimp, the commission shall consider all relevant factors, including:

(1) the site-assessment environmental report provided by the applicant under subsection (a)(1)(A) of this section;

(2) any sensitive aquatic habitat guidelines established by TPWD; and

(3) any comments on the application provided by the three-member application review committee referred to in subsection (b) of this section.

Source: The provisions of this §305.539 adopted to be effective September 13, 2000, 25 TexReg 8985

SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TPDES PERMITS

§ 305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations, Subchapter N, parts 400-471, except 40 Code of Federal Regulations, Part 403, which are in effect as of the date of Texas Pollutant Discharge Elimination System (TPDES) program authorization, as amended, are adopted by reference.

Source: The provisions of this §305.541 adopted to be effective ~~October 8, 1990, 15 TexReg 5492.~~

SUBCHAPTER Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

§ 305.571. Applicability

(a) Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR) §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

(b) When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

Source: The provisions of this §305.571 adopted to be effective July 29, 1992, 17 TexReg 5016; amended to be effective November 15, 2001, 26 TexReg 9123.

§ 305.572. Permit and Trial Burn Requirements

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through December 11, 1995 (see 60 FedReg 63417):

(1) §270.66(b)—Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amendment or modification shall proceed according to the applicable requirements of Subchapter D of this chapter (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) §270.66(c)—Requirements for Trial Burn Plans;

(3) §270.66(d)—Trial Burn Procedures, except §270.66(d)(3), and except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) §270.66(e)—Special Procedures for DRE Trial Burns; and

(5) §270.66(f)—Determinations Based on Trial Burn.

(b) With regard to trial burn notice procedures, the chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 Code of Federal Regulations §270.66(d)(3)(i)-(ii) as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

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Source: The provisions of this §305.572 adopted to be effective July 29, 1992, 17 TexReg 5016; amended to be effective November 20, 1996, 21 TexReg 10982; amended to be effective August 8, 1999, 24 TexReg 5879

§ 305.573. Interim Status and Trial Burn Requirements

(a) For the purpose of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §§266.104 through 266.107 and of determining adequate operating conditions under 40 CFR §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners), applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of 40 CFR §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners) must either prepare and submit a trial burn plan for approval by the executive director and perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6). The chief clerk shall provide notice of the executive director's intention to approve the trial burn, in accordance with the timing and distribution requirements of §305.572(b) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions). The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in 40 CFR §270.66(f) with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the executive director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn for approval by the executive director with Part B of the permit application, the approved trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the executive director.

(b) Owners and operators who have obtained approval of trial burn plans pursuant to 40 CFR §270.66 prior to the effective date of this section may request executive director approval of the trial burn plan and the executive director may approve the trial burn plan, whether or not the trial burn has been conducted. If the executive director does not approve the trial burn plan, then the owner or operator must prepare and submit a trial burn plan and receive approval from the executive director, and then perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6).

Source: The provisions of this §305.573 adopted to be effective July 29, 1992, 17 TexReg 5016; amended to be effective August 8, 1999, 24 TexReg 5869

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Texas Administrative Code

Title 30 Environmental Quality

2002—Part Two

[Replaces 2001 Pamphlet]

Amendments effective through
December 31, 2001

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CHAPTER 324. USED OIL

SUBCHAPTER A. USED OIL RECYCLING

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SUBCHAPTER A. USED OIL RECYCLING

§ 324.1. Federal Rule Adoption by Reference

The requirements in 40 Code of Federal Regulations, Part 279, Standards for the Management of Used Oil, as amended through May 26, 1998 at 69 FedReg 28556, are adopted by reference. However, requirements in this chapter also apply.

Source: The provisions of this §324.1 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.2. Definitions

Most words are as defined in 40 CFR §279.1. However, the following words have these meanings:

(1) Aboveground tank—A tank used to store or process used oil that is not an underground storage tank as defined in 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(2) Administrator or Regional Administrator—These terms in 40 CFR Part 279 requirements should be replaced with the "State Administrator, the Executive Director of the Texas Natural Resource Conservation Commission or his representative."

(3) Commission—The Texas Natural Resource Conservation Commission or its successor.

(4) Environmental Protection Agency (EPA)—This term in 40 CFR Part 279 requirements should be replaced with "commission."

(5) Recycling—

(A) Preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) Using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) Burning used oil for energy recovery.

(6) Re-refining—Applying processes (other than crude oil refining) to material composed primarily of used oil to produce high-quality base stocks for petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing.

~~(7) Secondary containment—Dikes, berms, retaining~~ walls, and/or equivalent made of a material(s) that is sufficiently impervious to used oil. These structures all potential spills of used oil from the tanks or containers, plus run-on water, until removal of the spill.

(8) Sufficiently impervious to used oil—Capable of containing all potential spills of used oil from containers and tanks until removal of the spill.

(9) Synthetic oils—Oils not derived from crude oil. This includes those from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids used as hydraulic or heat transfer fluids. Synthetic oils are generally used for the same purpose as crude oil derived oils and have relatively the same level of contamination after use.

(10) Used oil handler—A transporter or an owner or operator of a used oil transfer, processing, rerefining, or off-specification used oil burning facility.

(11) Earthen area—The active area of the facility is the earthen area at the facility over which any transportation, storage, or processing of used oil ~~occurs.~~

Source: The provisions of this §324.2 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.3. Applicability

Applicability and exemptions from applicability will be as in 40 CFR Part 279, Subpart B, and as clarified here.

(1) A used oil contaminated with a listed hazardous waste must be handled under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). EPA Hazardous Waste Number "F002" must be used on used oil that is listed hazardous due to halogenated contaminants.

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance

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with Parts 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in compliance with 40 CFR Part 264/265, Subpart K.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10 (b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per 30 TAC §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for "ignitability only" can be mixed with used oil. However, the resultant mixture cannot exhibit the hazardous ignitability characteristic to manage it under this chapter and 40 CFR Part 279 rather than Chapter 335 of this title. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics. The resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils or products is also a processor subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this chapter (relating to Processors and Re-refiners).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and 30 TAC §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

Source: The provisions of this §324.3 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.4. Prohibitions

Prohibitions will be as in 40 CFR Subpart B, §279.12 and as specified here.

(1) A person must not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or the environment.

(2) A person commits an offense if the person:

(A) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(B) knowingly puts used oil in waste that is to be disposed of in landfills or directly disposes of used oil on land;

(C) knowingly transports, treats, stores, disposes of, recycles, markets, burns, processes, rerefines used oil within the state:

(i) without first complying with the registration requirements of this rule; and/or

(ii) in violation of rules for the management of used oil;

(D) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses;

(E) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(F) intentionally makes any false representation in any document used for program compliance.

(3) An exception to paragraph (2) of this subsection is if a person unknowingly disposes into the environment any used oil that has not been separated by the generator from other solid wastes.

(4) An exception to paragraph (2)(B) of this subsection is if the mixing or commingling of used oil with waste to be disposed of in landfills is the unavoidable result of the mechanical shredding of motor vehicles, appliances or other metals.

Source: The provisions of this §324.4 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.5. Notice by Retail Dealer

Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.5 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.6. Generators

Rules for used oil generators shall be as in 40 CFR Part 279, particularly Subpart C. A person or entity that services equipment involving removal of used oil or changes used oil at a customer's home or business and transports the used oil from the site in quantities less than or equal to 55 gallons may choose to be the generator. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator will remain the generator.

Source: The provisions of this §324.6 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

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§ 324.7. Collection Centers

Rules for "do-it-yourselfer used oil collection centers" and "used oil collection centers" (as defined in 40 CFR §279.1) shall be as in 40 CFR Part 279, particularly Subpart D, and as specified here. All appropriate businesses and government agencies are encouraged to serve as "do-it-yourselfer used oil collection centers" or "used oil collection centers." Collection centers collecting used oil from households will be publicized by the commission.

(1) A "Do-it-yourselfer Used Oil Collection Center" must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) must register each odd numbered year, no later than January 25 following the close of the year, with the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087 utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) annually report the amount of household used oil collected by January 25 of each year on a commission form.

(2) Household used oil is not subject to the rebuttable presumption (a requirement to prove that used oil is not hazardous).

(3) A "Used Oil Collection Center" must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) register each odd numbered year no later than January 25 following the close of the year, with the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087 utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) report annually the amount of household and non-household used oil collected by January 25 of each year on a commission form. Mixtures of household used oil and non-household used oil shall be considered non-household used oil.

(4) Household used oil is not subject to the rebuttable presumption (a requirement to prove used oil is not hazardous) unless mixed with non-household used oil.

Source: The provisions of this §324.7 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.11. Transporters and Transfer Facilities

Rules for used oil transporters and transfer facilities are in 40 CFR Part 279, particularly Subpart E, and in this section.

(1) Underground storage tanks (USTs). Underground storage tanks containing used oil are subject to Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 279.

(2) Registration. Transporters must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Transporters must register, through the commission, using EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.11 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.12. Processors and Rerefiners

Rules for used oil processors and rerefiners are in 40 CFR Part 279, particularly Subpart F, and in this section.

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Processors and rerefiners must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Processors and rerefiners must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural

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Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Analysis plan. Each facility must prepare an analysis plan. The facility will follow the plan when sampling and analyzing, keeping records, and complying with analytical requirements for documenting that used oil is not listed hazardous and/or the used oil fuel specification has been met. This plan must specify the frequency of sampling and analysis. It must also specify procedures and analysis to assure listed hazardous wastes are not mixed with the used oil received. It must also contain procedures for handling a shipment of contaminated used oil. A facility need not prepare an analysis plan if it:

(A) only processes its own used oil; and

(B) uses adequate process knowledge instead of analysis to prove that the used oil meets rule requirements.

(4) Biennial report. The biennial report required by 40 CFR §279.57(b) covering each odd numbered year must be provided to the commission by December 1 of the odd numbered year if all used oil operations have been completed for that year. If not, you must submit the report by January 25 of the following even numbered year. The information must be entered on a commission form. Mail the report to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.12 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.13. Burners of Off-Specification Used Oil for Energy Recovery

Rules for burners of off-specification used oil for energy recovery are in 40 CFR Part 279, particularly Subpart G, and in this section.

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Burners must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Burners must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.13 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.14. Marketers of Used Oil Fuel

Rules for marketers of used oil which will be burned for energy recovery are in 40 CFR Part 279, particularly Subpart H, and this section. Marketers must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Marketers must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.14 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.15. Spills

See Chapter 327 of this title (relating to Spill Prevention and Control), particularly §327.4(b)(2) of this title (relating to Reportable Quantities). §324.16. Polychlorinated Biphenyls (PCBs). Per 40 CFR 279 (Table 1), the rules for burning used oil containing PCBs shall be as in 40 CFR 761.20(e).

Source: The provisions of this §324.15 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.16. Polychlorinated Biphenyls (PCBs)

Per 40 CFR 279 (Table 1), the rules for burning used oil containing PCBs shall be as in 40 CFR 761.20(e).

Source: The provisions of this §324.16 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.21. Suspension or Revocation of Registration

(a) The commission may suspend or revoke a registration for:

(1) failure to maintain complete and accurate records;

(2) alteration of any record, except justified and documented corrections;

(3) delivery of used oil to an unregistered entity;

(4) failure to comply with this rule or an order issued by the commission;

(5) failure to submit required reports;

(6) failure to maintain financial assurance; or

(7) failure to reasonably perform the used oil activities for which the registration was issued.

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

§ 335.1. Definitions

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

(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 protection 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, §91.173; 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

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(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 (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 et seq.).

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

(7) 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.

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

(9) 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.

(10) Battery—Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(11) 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; and

(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).

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

(13) Certification—A statement of professional opinion based upon knowledge and belief.

(14) 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).

(15) 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).

(16) 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).

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(17) 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.")

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

~~(19) Commercial hazardous waste management facility—Any hazardous waste management facility that accepts hazardous waste or PCBs 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, where "captured facility" means 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.~~

(20) Component—Either the tank or ancillary equipment of a tank system.

(21) 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.

(22) Consignee—The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

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

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

~~(25) Contaminant—Includes, but is not limited to, "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter, "pollutant" as defined in the Texas Water Code, §26.001, and Texas Health and Safety Code, §361.431, "hazardous substance" as defined in the Texas Health and Safety Code, §361.003, and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, Texas Water Code, §§26.261–26.268.~~

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

(27) 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.

~~(28) 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.~~

(29) Corrective action management unit (CAMU)—An area within a facility that is designated by the commission under 40 Code of Federal Regulations (CFR) Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Water Code, §7.031 (Corrective Action related to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(30) 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 (NACE) 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.

~~(31) 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.~~

(32) Designated facility—A Class 1 or hazardous waste storage, processing, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR Parts 270 and 124; a permit from a state authorized in accordance with 40 CFR Part 271 (in the case of hazardous waste); a permit issued pursuant to §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under §335.24(f), (g), or (h) of this

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title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator pursuant to §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). 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.

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

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

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

(36) 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.

(37) 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.

(38) 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.

(39) Drip pad—An engineered structure consisting of a curbed, free-draining base, constructed of a 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.

(40) 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 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, transport vehicle, or vessel as defined in this section.

(41) Environmental Protection Agency acknowledgment of consent—The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(42) Environmental Protection Agency hazardous waste number—The number assigned by the EPA to each hazardous waste listed in 40 CFR Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

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

~~(44) 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 EPA limits for drinking water as ~~published in the Federal Register.~~

(45) Equivalent method—Any testing or analytical method approved by the administrator under 40 CFR §260.20 and §260.21.

(46) 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.

(47) 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 con-

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struction of the site or installation of the tank system to be completed within a reasonable time.

(48) Explosives or munitions emergency—A situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), 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.

(49) 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.

(50) 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 (EOD), technical escort unit (TEU), 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.

~~(51) 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.~~

(52) 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. A facility may consist of several storage, processing, 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), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, 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).

(53) 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 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) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

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

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

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

(57) 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.

(58) Groundwater—Water below the land surface in a zone of saturation.

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(59) 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 EPA pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 CFR 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.

(60) Hazardous substance—Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 CFR Part 302.

(61) Hazardous waste—Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

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

(63) 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.

(64) 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.

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

(66) Inactive portion—That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

(67) Incinerator—Any enclosed device that:

(A) 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

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(68) 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.

(69) 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.

(70) 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 (HAFs) 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

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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.

~~(71) 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.~~

(72) 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.

(73) 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.

(74) Injection well—A well into which fluids are injected. (See also "underground injection.")

(75) 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.

(76) 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.

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

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

(79) 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.

(80) 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.

(81) 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.

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

(83) 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.

(84) Liner—A continuous layer of natural or manmade 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.

(85) 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.

(86) Manifest—The waste shipping document which accompanies and is used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is TNRCC-0311 (Uniform Hazardous Waste Manifest) which is furnished by the executive director or may be printed through the agency's "Print Your Own Manifest Program."

(87) Manifest document number—A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

(88) Military munitions—All ammunition products and components produced or used by or for the DOD or the United States Armed Services for na-

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tional 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.

(89) 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).

(90) Movement—That ~~solid waste or~~ hazardous waste transported to a facility in an individual vehicle.

(91) 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.

(92) 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.

(93) 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 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.")

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

(95) 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.

(96) 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.

(97) 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 "incineration" and "thermal treatment.")

(98) Operator—The person responsible for the overall operation of a facility.

(99) Owner—The person who owns a facility or part of a facility.

(100) 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 Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing 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

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(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.

(101) PCBs or polychlorinated biphenyl compounds—Compounds subject to Title 40, CFR Part 761.

(102) 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 storage, processing, or disposal facility in accordance with specified limitations.

(103) Person—Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

(104) 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.

(105) Pesticide—Has the definition adopted under §335.261 of this title.

~~(106) 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 §§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;

(xii) used oils—(See definition for "used oil" in this section); and

(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 United States Code §§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.~~

(107) 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.

(108) 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.

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~~(109) Poultry—Chickens or ducks being raised or~~ kept on any premises in the state for profit.

(110) 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.

(111) 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.~~

(112) Primary exporter—Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 CFR Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(113) 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 Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §§6901 et seq., as amended.

(114) 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 Clean Water Act, §502(4)). The definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

(115) 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.

(116) Receiving country—A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(117) Regional administrator—The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

~~(118) Remediation—The act of eliminating or reducing the concentration of contaminants in contaminated media.~~

~~(119) 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 the 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 the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

(120) 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 storage, ~~processing, or disposal.~~

(121) 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"

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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 EPA or state approved corrective action.

(122) 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.

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

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

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

~~(126) Shipment—Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.~~

(127) 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 Btu/lb of sludge treated on a wet-weight basis.

(128) Small quantity generator—A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

(129) 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 pursuant to the 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), 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 pursuant to the 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 pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §§6901 et seq., as amended; or

(iv) a material excluded by 40 CFR §261.4(a)(1)–(19), as amended through May 11, 1999, (64 FR 25408), subject to the changes in this clause, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'Solid Waste' in §335.1 of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to "40 CFR §261.

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38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1," and the reference to "40 CFR §261.28(c)(10)" is changed to "40 CFR §261.38(c)(10)";

(II) in 40 CFR §261.38(c)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)," and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3), (4), and (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to "§335.1(129)(D)(iv) of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(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; or

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

(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; or

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

(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 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 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 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 would 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 (except as provided under 40 CFR §261.4(a)(17)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)).

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

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Figure: 30 TAC §335.1(129)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i) (1)	Energy Recovery/Fuel S.W. Def. (D)(ii) (2)	Reclamation S.W. Def. (D)(iii) (3)[2]	Speculative Accumulation S.W. Def. (D)(iv) (4)
Spent materials (listed hazardous & 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 other than excluded scrap metal (see §335.17(9)) (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9)) (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) only.
[2]Except as provided in 40 CFR §261.4(a)(17) for mineral processing 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.

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(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)–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 would 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 would 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 Chapter 335, Subchapter R of this title (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 Chapter 335, Subchapter R of this title; and

(-b-) does not exceed a concentration limit under 30 TAC §312.43(b)(3), Table 3; and

(viii) notwithstanding 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 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) 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.

(K) 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 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Ma-

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~~terials), §335.18 of this title (relating to 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), §335.24 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 Materials).~~

(130) 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.

~~(131) 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.~~

(132) Staging pile—An accumulation of solid, nonflowing 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 CFR §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(133) 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.

(134) 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 storage, processing, 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.

(135) 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.

(136) 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.

(137) Tank system—A ~~solid waste or~~ hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(138) 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.

(139) 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.")

(140) Thermostat—Has the definition adopted under §335.261 of this title.

(141) 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.

(142) 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 are held during the normal course of transportation.

(143) Transit country—Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(144) 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.

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

(146) 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;

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(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 40 CFR §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions 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.

~~(147) 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.~~

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

(149) 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.")

(150) 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.

(151) 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.

(152) Universal waste—Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) of this title that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(153) Universal waste handler—Has the definition adopted under §335.261 of this title.

(154) Universal waste transporter—Has the definition adopted under §335.261 of this title.

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

(156) 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.

(157) 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, Conditionally Exempt Small Quantity Generator (CESQG) 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) and 40 CFR Part 279 (Standards for Management of Used Oil).

(158) 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 (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.

(159) 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.

(160) 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.

(161) 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.

Source: The provisions of this §335.1 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective January 6, 1987, 11 TexReg 5096; amended to be effective July 14, 1987, 12 TexReg

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2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effectiveNovember27,1992,17TexReg8010;amended to be effective June 28, 1993, 18 TexReg 3814; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969; amended to be effective May 30, 1995, 20 TexReg 3722; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective July 16, 1997, 22 TexReg 6456; amended to be effective September 23, 1997, 22 TexReg 9252; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 4, 1999, 24 TexReg 2352; amended to be effective September 5, 1999, 24 TexReg 6790; amended to be effective December 5, 1999, 24 TexReg 10562; amended to be effective April 30, 2000, 25 TexReg 3547;amended to be effective April 12, 2001, 26 TexReg 2741; amended to be effective May 30, 2001, 26 TexReg 3807; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 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 Natural Resource Conservation Commission or its predecessor agencies, the Texas Department of Health, 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 sub~~section (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 Texas Natural Resource Conservation Commission (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 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 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 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 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

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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 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 United States Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations, §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 (relating to Application for Existing On-Site 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.

~~(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, or a wastewater treatment 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 10 days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment; or

(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 Clean Water 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 that permit.

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(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 Code of Federal Regulations §261. 4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste which is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements set out at 40 Code of Federal Regulations §261.4(e) and (f), as amended and adopted in the Code of Federal Regulations through February 18, 1994, at 59 FedReg 8362, which are adopted herein by reference.

~~(h) A person may obtain authorization from the executive director for the storage, processing, or~~

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disposal of nonhazardous industrial solid waste in an interim status landfill which has qualified for interim status pursuant to 40 Code of Federal Regulations, Part 270, Subpart G, and which has complied with the standards set forth in Subpart E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), by complying with the notification and information requirements as set forth 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 Title 40, Code of Federal Regulations, §265.301(a). In accordance with §335.6 of this title (relating to Notification Requirement), 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) PCB wastes subject to regulation by 40 Code of Federal Regulations, 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 would require a license from the Texas Department of Health or Texas Natural Resource Conservation Commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.136(b)(6)(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 (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), 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 Code of Federal Regulations, §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under 40 Code of Federal Regulations, §270.1(c)(5) and (6). If a post-closure permit is required, the permit must address applicable provisions of 40 Code of Federal Regulations, Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) provisions relating to 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 Environmental Protection Agency (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 (relating to Notification Requirements).

(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).

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Source: The provisions of this §335.2 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective January 5, 1988, 12 TexReg 4846; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective August 14, 1990, 15 TexReg 4397; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective May 12, 1993, 18 TexReg 2799; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective November 29, 1995, 20 TexReg 9748; amended to be effective November 20,1996, 21TexReg 10983; amended to be effective September 23, 1997, 22 TexReg 9252; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective September 5, 1999, 24 TexReg 6790; amended to be effective April 30, 2000, 25 TexReg 3547

§ 335.3. Technical Guidelines

In order to promote the proper collection, handling, storage, processing, and disposal of industrial solid waste or municipal hazardous waste in a manner consistent with the purposes of Texas Health and Safety Code, Chapter 361, the executive director will make available on request, copies of technical guidelines outlining methods designed to aid in the prevention of the conditions prohibited in this chapter. Guidelines should be considered as suggestions only.

Source: The provisions of this §335.3 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.4. General Prohibitions

In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Natural Resource Conservation Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

Source: The provisions of this §335.4 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.5. Deed Recordation of Waste Disposal

(a) Deed recordation of disposal of industrial solid waste or municipal hazardous waste. No person may cause, suffer, allow, or permit the disposal of industrial solid waste or municipal hazardous waste in a landfill prior to recording in the county deed records of the county or counties in which the disposal takes place the following information:

(1) a metes and bounds description of the portion or portions of the tract of land on which disposal of industrial solid waste or municipal hazardous waste will take place;

(2) the class or classes of industrial solid wastes or municipal hazardous wastes to be disposed of and waste description; and

(3) the name or permanent address of the person or persons operating the facility where more specific information on the disposal activity can be obtained.

(b) Proof of recordation. Proof of recordation shall be provided to the executive director in writing prior to instituting disposal operations.

(c) Additional requirements. Owners of property on which facilities for disposal of hazardous waste are located are subject to further requirements adopted by reference in §335.112(a)(6) of this title (relating to Standards).

Source: The provisions of this §335.5 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective June 28, 1993, 18 TexReg 3814.

§ 335.6. Notification Requirements

(a) Any person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), (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 in writing or using electronic notification software provided by the executive director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. The executive director may require submission of information necessary to determine whether storage, processing, or disposal is compliant with the terms of this chapter. Required 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 registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written

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request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

~~(b) Any person who stores, processes, or disposes~~ of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(c) Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in any calendar month or greater than 100 kilograms in any calendar month of industrial Class 1 waste shall notify the executive director of such activity using electronic notification software or paper forms provided by the executive director. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. The executive director may require submission of information necessary 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, 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 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 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any such changes or additional information to that reported previously. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. If waste is recycled on-site or managed pursuant to §335.2(d) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section. 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:

(1) a description of the waste;

(2) a description of the process generating the waste;

(3) the composition of the waste;

(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261. Generators must determine whether such waste is hazardous as defined in 40 CFR Part 261 and submit the results of that hazardous waste determination to the executive director;

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

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

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

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

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

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(d) Any person who transports hazardous or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:

(1) industrial generators who generate less than 100 kilograms of Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste; and

(2) municipal generators who generate less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste.

(e) Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

(f) Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.

(g) 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 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.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste 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 must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) 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 of this section; and

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

(j) Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG 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).

(k) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to 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), §335.24 of this title, and Subchapter H of this chapter.

Source: The provisions of this §335.6 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective July 29, 1992, 17 TexReg 5616; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective May 12, 1993, 18 TexReg 2799; amended to be effective June 28, 1993, 18 TexReg 3814; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective May 30, 1995,20 TexReg 3722; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400; amended to be effective December 15, 1997, 22 TexReg 12060; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.7. Financial Assurance Required

Authority to store, process, or dispose of industrial solid waste or municipal hazardous waste pursuant to a permit issued by the commission is contingent upon the execution and maintenance of financial assurance for the amount(s) specified in its permit in accordance with Chapter 37, Subchapter P of this

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title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), which provides for the closing of the solid waste storage, processing, or disposal facility in accordance with the permit issued for the facility and all other rules of the commission. The commission may require the execution and maintenance of financial assurance in accordance with Chapter 37, Subchapter P of this title for the closing of any solid waste facility exempt from the requirement of a permit under this chapter, but subject to the requirement of a permit under the Texas Water Code, Chapter 26. Persons storing, processing, or disposing of hazardous waste are subject to further requirements concerning financial assurance and closure and post-closure contained in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the executive director determines that there is a significant risk to human health and the environment from sudden or nonsudden accidental occurrences resulting from the operations of a solid waste storage, processing, or disposal facility, the owner or operator may be required to provide coverage for sudden and/or nonsudden accidental occurrences in accordance with Chapter 37, Subchapter P of this title.

Source: The provisions of this §335.7 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective January 5, 1988, 12 TexReg 2335; amended to be effective March 21, 2000, 25 TexReg 2394

§ 335.8. Closure and Remediation

(a) Applicability. The regulations of this section, in addition to other applicable rules, permits, or orders, establish the obligation for persons to perform closures or remediations for facilities or areas containing industrial solid waste or municipal hazardous waste. The person can fulfill this obligation by meeting the risk reduction standards of this section or the remedy standards of Chapter 350 of this title (relating to Texas Risk Reduction Program), depending on the time of initial notification to the executive director of intent to conduct closure or remediation. The regulations of this section will remain in effect for persons who notify the executive director before May 1, 2000, of a closure or remediation in accordance with this section, unless the person elects to comply fully with Chapter 350 of this title prior to that date. Persons who notify of a closure or remediation in response to this section have up to five years from May 1, 2000, within which to submit for executive director review and approval according to this section a final report which demonstrates attainment of risk reduction standards 1 or 2. Persons will automatically qualify for this grandfathering provision if they have received a letter from the agency acknowledging receipt of the initial notification, or submit other forms of documentation by May 1, 2001, that proper and timely notification had been made. The person who has submitted a final remedial investigation report that fully complies with §335.553(b)(1) of this title (relating to Risk Reduction Standard Number 3), prior to May 1, 2001, may elect to either continue under these rules or to proceed under Chapter 350 of this title. Any person who qualifies for this grandfathering provision and elects to continue using the provisions of this section may not use any of the provisions of Chapter 350 of this title. If the executive director denies approval of the final remedial investigation report under this section for reasons of technical inadequacy, the executive director may require the person to comply with the requirements of Chapter 350 of this title. For closures and remediations initially reported to the executive director on or after May 1, 2000, the person shall use the procedures of Chapter 350 of this title. The regulations in this section supplement but do not replace any requirements for closure or remediation specified in the regulations for the programs subject to these rules and shall continue to apply as specified in paragraphs (1)–(4) of this subsection to persons who qualify for this grandfathering provision.

(1) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §335.2(a) of this title (relating to Permit Required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(2) Any person who stores, processes, or disposes of hazardous waste is also subject to the applicable provisions relating to closure and post-closure in Subchapters E and F of this chapter (relating to Interim Standards for Hazardous Waste Storage Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities respectively).

(3) Persons who have received approval of closure or remediation plans by the executive director and have either completed or not completed the action prior to June 28, 1993, may either maintain or complete the action, as applicable, according to the approved plan and are not subject to the requirements of this section unless a substantial change in circumstances develops at the facility or area which

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(A) a failure of institutional or engineering controls to prevent or mitigate exposure at the approved performance level;

(B) a change in land use from nonresidential to residential; or

(C) an actual exposure condition is determined to be occurring at levels not protective of human health or the environment. For purposes of this subparagraph, changes made to Subchapter S of this chapter (relating to Risk Reduction Standards) in response to periodic reviews of the general procedures specified to generate numeric cleanup levels, or in response to annual revisions of Appendix II of Subchapter S to reflect new toxicity data, do not constitute a substantial change in circumstances, unless these changes are of such magnitude to present an unacceptable threat to human health or the environment when evaluated for future exposure conditions based on site-specific considerations; or

(D) new information indicates that the contamination at the facility or area was not sufficiently characterized such that an unacceptable threat to human health or the environment continues to exist.

(c) Notification and Initiation Requirements. Persons who qualify according to subsection (a) of this section for an extended period of time for submittal of a final report to be reviewed according to this section must also respond, as appropriate, to the requirements of paragraphs (1)–(5) of this subsection.

(1) A person who intends to continue any activity of closure or remediation in accordance with subsection (b) of this section shall determine the risk reduction standard(s) to be attained. If required by subsection (a) of this section to resubmit this notification, the person shall notify the executive director and the commission's office in the district where the facility or area is located in writing of the following information by May 1, 2001:

(A) the facility or area to be subject to closure or remediation activities;

(B) the risk reduction standard(s) to be attained; and

(C) the estimated time necessary to complete the activity.

(2) After performing notification in accordance with paragraph (1) of this subsection, the person may initiate the actions necessary to attain risk reduction standard numbers 1 or 2 without prior approval by the executive director, unless such approval is required by other regulation, order, or permit of the commission. Any plan submitted for prior approval by the executive director shall contain the information specified in §335.553(a) of this title (relating to Required Information).

(3) If the person intends to attain Risk Reduction Standard Number 3, the person shall submit to the executive director the information specified in §335.553(b) of this title for approval prior to beginning or continuing, as applicable, the closure or remediation activities.

(4) The person may include one or more waste management units or areas in a submittal for the purpose of responding to this subsection and subsection (d) of this section.

(5) Notwithstanding any other requirement, the person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the closure or remediation is compliant with this section.

(d) Demonstration of conformance with risk reduction standards. Upon completion of a closure or remediation, the person shall demonstrate in a form acceptable to the executive director that the activity meets the intended risk reduction standards and any applicable closure criteria listed or referenced in this chapter. Any submittal to the executive director in response to this subsection shall be in the form of a plan or report that contains the information specified in §335.553 of this title.

Source: The provisions of this §335.8 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective June 28, 1993, 18 TexReg 3814; amended to be effective September 23, 1999, 24 TexReg 7426

§ 335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and which, at a minimum, includes the information described in subparagraphs (A)–(G) of this paragraph. These records may be maintained in any format, provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

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(A) the description, character, and classification of each waste, and any changes and additional information required under §335.6(c) and (d) of this title (relating to Notification Requirements);

(B) the quantity generated;

(C) except for conditionally exempt small quantity generators regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators), the quantity held in on-site storage as of December 31 of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal as described by codes listed on the form or instructions;

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the name, address, and location of each off-site facility and transporter receiving shipments;

(G) the location of all hazardous waste accumulation areas, situated at or near any point of generation, where hazardous wastes under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time).

~~(2) The generator shall submit to the executive~~ director a complete and correct Annual Waste Summary detailing the management of each hazardous and Class 1 waste generated on-site during the reporting calendar year. The Annual Waste Summary shall also include the management of any hazardous or Class 1 waste generated in a year previous to the reporting year, but managed in the reporting calendar year. The Annual Waste Summary shall be submitted using electronic software or paper forms provided or approved by the executive director. Upon written request by the generator, the executive director may authorize an extension to the report due date. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must submit the Annual Waste Summary using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative reporting method. Generators shall report as follows.

(A) Generators submitting their Annual Waste Summary on paper forms must do so on or before January 25 of the year following the reporting calendar year.

~~(B) Generators submitting their Annual Waste~~ Summary electronically must do so on or before March 1 of the year following the reporting calendar year.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) during the year, total on-site accumulation of hazardous waste did not equal or exceed 1,000 kilograms;

(B) no acute hazardous waste was generated or accumulated during the year exceeding the limits specified in §335.78(e)(1) and (2) of this title;

(C) a total of less than 1,200 kilograms of hazardous waste, and a total of less than 1,200 kilograms of Class 1 waste (2,400 kilograms or less of hazardous waste plus Class 1 waste combined) was generated during the year.

(4) Generators who are regulated under §335.78 of this title and also meet the requirements of paragraph (3) of this subsection are not required to submit an annual summary.

~~(b) A generator who ships his hazardous waste~~ off-site must also report the information specified in §335.71 of this title (relating to Biennial Reporting). Any waste related information that has already been submitted by generators under the requirements of this section or §335.71 of this title need not be included in the reports from permitted or interim ~~status facilities under 40 CFR §264.75 or §265.75.~~

Source: The provisions of this §335.9 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective February 4, 1994, 19 TexReg 509; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective December 15, 1997, 22 TexReg 12060; amended to be effective May 20, 1999, 24 TexReg 3726; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

~~(a) Except as provided in subsection (g) and (h) of~~ this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) for generators of industrial nonhazardous Class ~~1 waste in a quantity greater than 100 kilograms per~~

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month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste storage, processing, or disposal facility in Texas; a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311 is prepared;

(2) the generator is either an industrial generator that generates less than 100 kilograms of nonhazardous Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title;

(3) for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the consignment state's manifest, if provided, or a Texas state manifest if the consignment state does not provide a manifest, is prepared, unless the generator is identified in paragraph (2) of this section;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a manifest from the primary exporter's state if that state supplies the manifest form and requires its use or a manifest from any source if the primary exporter's state does not supply the manifest form; and

(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Special Handling Instructions and Additional Information." If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste;

(6) for shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(b) The manifest shall contain the following information.

(1) The manifest shall contain the generator's United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is nonhazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.

(2) The manifest shall contain the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of ____).

(3) The manifest shall contain the name, mailing address, and telephone number of the generator.

(4) The manifest shall contain the telephone number where an authorized agent of the generator may be reached in the event of an emergency.

(5) The manifest shall contain the generator's TNRCC registration and/or permit number. Conditionally exempt small quantity generators (CESQGs) of hazardous waste or industrial generators of less than 100 kg per month of nonhazardous Class 1 waste and less than CESQG limits of hazardous waste that are exempt from manifesting may voluntarily choose to manifest their hazardous or Class 1 industrial nonhazardous waste. Such exempt generators may utilize the letters "CESQG" for their TNRCC generator registration number.

(6) The manifest shall contain the first transporter's company name.

(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous or the transporter is a conditionally exempt small quantity generator transporting only his own hazardous waste.

(8) The manifest shall contain the first transporter's state registration number. Conditionally exempt small quantity generators who are not required to notify of their transportation activities as specified in §335.6(d) of this title (relating to Notification Requirements) may use the letters "CESQG" as the TNRCC transporter's registration number when transporting their own hazardous or Class 1 nonhazardous waste.

(9) The manifest shall contain a telephone number where an authorized agent of first transporter may be reached in the event of an emergency.

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(10) The manifest shall contain the second transporter's company name.

(11) The manifest shall contain the second transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is non-hazardous.

(12) The manifest shall contain the second transporter's state registration number.

(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an emergency.

(14) The manifest shall contain the company name and site address of the facilities designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof.

(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is non-hazardous.

(16) The manifest shall contain the TNRCC storage, processing, or disposal facility registration and/or permit number.

(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations (CFR) §172.201(a)(1)), the TNRCC has added an HM column on the manifest before the DOT description. When a waste shipment consists of both federally regulated materials and state-regulated wastes, the HM column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.

~~(18) The manifest shall contain the DOT proper~~ shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified ~~in 49 CFR Parts 171-177. If the shipment contains non-hazardous waste solely regulated by the TNRCC,~~ then the TNRCC waste classification code description ~~should be used~~.

(19) The manifest shall contain the number of containers for each waste and the appropriate abbreviation from Table 1 from §335.30 of this title (relating to Appendix I) for the type of container.

(20) The manifest shall contain the total quantity of each waste described on each line.

(21) The manifest shall contain the unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 CFR Parts 264 or 265.

(22) The manifest shall contain the TNRCC waste classification code assigned to the waste by the generator.

(23) The manifest shall contain a certification by the generator stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; or, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

(24) If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space provided below the word "highway". If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word "highway."

(c) The manifest shall consist of at least the number of copies which will provide the generator, each transporter, the owner or operator of the storage, processing, or disposal facility and in the case of hazardous waste exports, ~~the United States customs official,~~ with one copy each for their records and another copy to be returned to the generator.

(d) At the time of waste transfer, the generator shall:

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(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §335.13(i) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste); and

(4) give the transporter the remaining copies of the manifest.

(e) For shipments of hazardous waste or Class 1 waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) For rail shipments of hazardous waste or Class 1 waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) the next non-rail transporter, if any;

(2) the designated facility if transported solely by rail; or

(3) the last rail transporter to handle the waste in the United States if exported by rail.

~~(g) No manifest is required for the shipment of~~ Class 1 waste which is not hazardous waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that 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 another source with respect to other plants or operations owned by the same person.

(h) No manifest and no marking in accordance with §335.67(b) of this title (related to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or ~~private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).~~

Source: The provisions of this §335.10 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective May 20, 1999, 24 TexReg 3726; amended to be effective November15, 2001, 26 TexReg 9135.

§ 335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary exporters of hazardous waste) to an off-site storage, processing, or disposal facility, unless the transporter:

(1) obtains a manifest completed by the generator or primary exporter where appropriate in accordance with §335.10 of this title;

(2) upon receipt and prior to shipment, signs and dates the manifest acknowledging the acceptance of waste from the generator or primary exporter where appropriate;

(3) returns a signed copy to the generator or primary exporter where appropriate before leaving the generator's property; and

(4) in the case of hazardous waste exports, knows that the shipment conforms to the requirements set forth in the regulations contained in 40 Code of Federal Regulations §263.20(a), as amended and adopted through April 12, 1996, at 61 FedReg 1629(

(b) The transporter shall ensure that the manifest accompanies the municipal hazardous waste or Class 1 waste.

(c) No transporter may cause, suffer, allow, or permit the delivery of a shipment of hazardous waste or Class 1 waste to another transporter designated on the manifest, unless the transporter:

(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste);

(3) gives the remaining copies of the manifest to the accepting transporter; and

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(4) in the case of hazardous waste exports, ensures that a copy of the EPA acknowledgment of consent also accompanies the hazardous waste.

~~(d) No transporter may cause, suffer, allow, or~~ permit the delivery of a shipment of municipal hazardous waste or Class 1 waste to a storage, processing, or disposal facility, unless the transporter:

(1) obtains the date of delivery and the handwritten signature on the manifest of the owner or operator of the facility designated on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title; and

(3) gives the remaining copies of the manifest to the owner or operator of the facility designated on the manifest.

(e) The requirements of subsections (b)–(d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;

(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste;

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;

(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title.

(f) For shipments involving rail transportation, the requirements of subsections (b)–(e) of this section do not apply and the following requirements do apply.

(1) When accepting Class 1 waste from a nonrail transporter, the initial rail transporter must:

(A) sign and date, the manifest acknowledging acceptance of the waste;

(B) return a copy of the manifest to the nonrail transporter;

(C) forward at least three copies of the manifest to:

(i) the next non-rail transporter, if any;

(ii) the designated facility, if the shipment is delivered to that facility by rail; or

(iii) the last rail transporter designated to handle the waste in the United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering Class 1 waste or municipal hazardous waste to the designated facility, a rail transporter must:

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title.

(4) When delivering hazardous waste or Class 1 waste to a nonrail transporter, a rail transporter must:

(A) obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and

(B) retain a copy of the manifest in accordance with §335.14(c) of this title.

(5) Before accepting municipal hazardous waste or Class 1 waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste or Class 1 waste out of the United States shall:

(1) indicate on the manifest the date the municipal hazardous waste or Class 1 waste left the United States under the item labeled "special handling instructions and additional information";

(2) sign the manifest and retain one copy in accordance with §335.14(c) of this title;

(3) return a signed copy of the manifest to the generator or primary exporter where appropriate; and

(4) give a copy of the manifest to a United States customs official at the point of departure from the United States.

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(h) The transporter must deliver the entire quantity of municipal hazardous waste or Class 1 waste which he has accepted from a generator or a transporter to:

(1) the designated facility listed on the manifest;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;

(3) the next designated transporter; or

(4) the place outside the United States designated by the generator.

(i) If the transporter cannot deliver the waste in accordance with subsection (h) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

Source: The provisions of this §335.11 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.12. Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities

(a) No owner or operator of a storage, processing, or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), for off-site storage, processing, or disposal unless:

(1) a manifest accompanies the shipment which designates that facility to receive the waste; and

(2) the owner or operator signs the manifest and immediately gives at least one copy of the signed manifest to the transporter; and

(3) retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(4) within 30 days after the delivery, sends a copy of the manifest to the generator or primary exporter where appropriate; and

~~(5) in the case of hazardous waste exports, a copy~~ of the EPA acknowledgment of consent also accompanies the waste ~~and the~~ owner or operator has no knowledge ~~that~~ the shipment does not conform to ~~the EPA acknowledgment of consent.~~

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class 1 waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste or Class 1 waste covered by the manifest or the shipping paper was received;

(2) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(3) within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title.

(c) If a facility receives hazardous waste or Class 1 waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class 1 waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class 1 waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:

(A) for bulk weight, variations greater than 10% in weight; and

(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The

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commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations (CFR) §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

~~(d) Within three working days of the receipt of a shipment subject to 40 CFR Part 262, Subpart H, concerning transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries, as defined under 40 CFR §262.81. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.~~

Source: The provisions of this §335.12 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective November 15, 2001, 26 TexReg 9135.

~~§ 335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste~~

~~(a) Unregistered generators who ship hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.~~

~~(b) Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.~~

~~(c) Registered generators or out-of-state primary exporters who import hazardous or Class 1 waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary (F1) from the manifests.~~

~~(d) The Waste Shipment Summary (S1) and the Foreign Waste Shipment Summary (F1) shall be prepared in a form provided or approved by the executive director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. The unregistered generator or in-state/out-of-state primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary (S1) and/or Foreign Waste Shipment Summary (F1) only for those months in which shipments are actually made. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.~~

~~(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method.~~

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registered/unregistered generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(l) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.

(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR) §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 CFR §262.56, as amended and adopted through April 12, 1996, at 61 FedReg 16290.

Source: The provisions of this §335.13 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 4, 1994, 19 TexReg 509; amended to be effective June 4, 1997, 22 TexReg 4585; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effectiveNovember 15, 2001, 26 TexReg 9135.

§ 335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste

(a) A transporter of hazardous waste or Class 1 waste shall retain a copy of each manifest signed by the generator or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class 1 waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title for a period of three years from the date the hazardous waste or Class 1 waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class 1 waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Source: The provisions of this §335.14 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities

This section applies to owners and operators who receive hazardous or Class 1 waste from off- site sources or who have notified that they intend to receive hazardous or Class 1 waste from off-site sources.

(1) The owner or operator of the storage, processing, or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate.

(2) Except as provided in paragraph (6) of this section or as provided in §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), the owner or operator shall prepare a complete and correct Monthly Waste Receipt Summary for all manifested and unmanifested hazardous or Class 1 waste ship-

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ments received. The Monthly Waste Receipt Summary shall be submitted electronically, using software provided by the executive director. Upon written request by the receiver, authorization may be given by the executive director to use paper forms or an alternative reporting method. The Monthly Waste Receipt Summary shall be submitted to the executive director on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of storage, processing, and disposal of waste and for units of measure may be found on the form or accompanying instructions.) Any owner or operator of a storage, processing, or disposal facility required to comply with this subsection shall prepare and submit a Monthly Waste Receipt Summary each month even if no waste was received.

(3) The owner or operator shall submit a report on forms provided or approved by the executive director summarizing the types and volumes of any hazardous waste received without manifests, or, in the case of shipments by rail or water (bulk shipments), without shipping papers. This report shall be submitted within 15 days of receiving the waste, regardless of quantity, and shall include the following information:

(A) the EPA identification number, name, and address of the facility;

(B) the date the facility received the waste;

(C) the EPA identification number, name, and address of the generator and the transporter, if available;

(D) a description and the quantity of each hazardous waste the facility received which was not accompanied by a manifest;

(E) the method of storage, processing, or disposal for each hazardous waste;

(F) the certification signed by the owner or operator of the facility or his authorized representative; and

(G) a brief explanation of why the waste was unaccompanied by a manifest, if known.

(4) The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this subsection for a minimum of three years from the date of each summary.

(5) The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(6) An owner or operator reclaiming hazardous wastes received from conditionally exempt small quantity generators is subject to the requirements of this section requiring completion of a Monthly Waste Receipt Summary, from his copy of all manifests received during the month, unless he has requested in writing a modification in the reporting requirements. A modification relieving the owner or operator of having to report each manifested shipment on the Monthly Waste Receipt Summary may be granted at the discretion of the executive director on a case-by-case basis.

(7) Information which has already been submitted by permitted or interim status facilities under the requirements of this section need not be included in the reports required by 40 CFR §264.75 or §265.75 (relating to Biennial Reports); these biennial reports must be submitted to the executive director in letter format rather than by EPA form.

Source: The provisions of this §335.15 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective February 4, 1994, 19 TexReg 509; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective December 15, 1997, 22 TexReg 12060; amended to be effective May 20, 1999, 24 TexReg 3726

§ 335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials

(a) For the purposes of the definition of solid waste in §335.1 of this title (relating to Definitions) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) a spent material is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) sludge has the same meaning used in Texas Health and Safety Code, §361.003;

(3) a by-product is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process;

(4) a material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents;

(5) a material is used or reused if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a

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product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment);

(6) scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled;

(7) a material is recycled if it is used, reused, or reclaimed;

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) Excluded scrap metal is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 CFR §261.4(a)(14)).

(11) Home scrap metal is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) Prompt scrap metal is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

~~(b) Other portions of this chapter that relate to~~ solid wastes that are recycled include §335.1 of this title, under the definition of Solid Waste, §335.6 of this title (relating to Notification Requirements), §335.18 of this title (relating to 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), §335.24 of this title, and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes ~~and Specific Types of Materials).~~

Source: The provisions of this §335.17 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 4, 1999, 24 TexReg 2352; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.18. Variances from Classification as a Solid Waste

(a) In accordance with the standards and criteria in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler), the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original production process in which they were generated; or

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(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

~~(b) Other portions of this chapter that relate to~~ solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §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 Materials).~~

Source: The provisions of this §335.18 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective October 19, 1998, 23 TexReg 10878.

§ 335.19. Standards and Criteria for Variances from Classification as a Solid Waste

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following criteria:

(1) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss;

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) the prevalence of the practice on an industry-wide basis;

(3) the extent to which the material is handled before reclamation to minimize loss;

(4) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(5) the location of the reclamation operation in relation to the production process;

(6) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) whether the person who generates the material also reclaims it;

(8) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(1) the degree of processing the material has undergone and the degree of further processing that is required;

(2) the value of the material after it has been reclaimed;

(3) the degree to which the reclaimed material is like an analogous raw material;

(4) the extent to which an end market for the reclaimed material is guaranteed;

(5) the extent to which the reclaimed material is handled to minimize loss;

(6) other relevant factors.

~~(d) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of~~

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"Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §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 Materials).

Source: The provisions of this §335.19 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective October 19, 1998, 23 TexReg 10878.

§ 335.20. Variance To Be Classified as a Boiler

In accordance with the standards and criteria in §335.1 of this title (relating to Definitions) (definition of boiler), and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in §335.1 of this title (relating to Definitions), after considering the following criteria:

(1) the extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(2) the extent to which the combustion chamber and energy recovery equipment are of integral design;

(3) the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

(4) the extent to which exported energy is utilized;

(5) the extent to which the device is in common and customary use as a boiler functioning primarily to produce steam, heated fluids, or heated gases; and

(6) other factors, as appropriate.

Source: The provisions of this §335.20 adopted to be effective May 29, 1986, 11 TexReg 2335.

§ 335.21. Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(1) The applicant must apply to the executive director for the variance. The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) or §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(2) The executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the hearing (if any). Any person affected by a final decision of the executive director may file with the chief clerk a motion for reconsideration, subject to §50.39(b)-(f) of this title (relating to Motion for Reconsideration).

Source: The provisions of this §335.21 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective October 19, 1998, 23 TexReg 10878.

§ 335.22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis

The commission may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) should be regulated under §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. The procedures for this decision are set forth in §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities). In making this decision, the commission will consider the following factors:

(1) the types of materials accumulated or stored and the amounts accumulated or stored;

(2) the method of accumulation or storage;

(3) the length of time the materials have been accumulated or stored before being reclaimed;

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(4) whether any contaminants are being released into the environment, or are likely to be so released; and

(5) other relevant factors.

Source: The provisions of this §335.22 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 20, 1996, 21 TexReg 10983.

§ 335.23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities

The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) under the provisions of §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), rather than under the provisions governing Recyclable Materials Utilized for Precious Metal Recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste). The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing. The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste) is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 80 of this title (relating to Contested Case Hearings) and the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

~~(2) If the person is accumulating the recyclable~~ material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property). The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reasons for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period ~~and in any subsequent hearing~~.

Source: The provisions of this §335.23 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective October 19, 1998, 23 TexReg 10878.

§ 335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d)–(f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable

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materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(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); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property).

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B-I or 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; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; 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); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property) or Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.56(a)(1)-(4) and (6) and (b), and 262.57, which are in effect as of November 8, 1986, export such materials only upon such consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, which are in effect as of November 8, 1986, and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;

(B) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the

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facility designated by the person initiating the shipment;

(2) scrap metal that is not already excluded under 40 CFR §261.4(a)(13);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 CFR §261.4(a)(12)); and

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)–(c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and the notification requirements under §335.6 of this title, except as provided in subsections (a)–(c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a)–(c) of this section:

(1) notification requirements under §335.6 of this title;

(2) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

~~(g) Recyclable materials (excluding those listed in~~ subsections (b)(4), (c)(1) and (2)–(5) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9–335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous ~~recyclable materials and recyclable materials listed~~

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~~in subsection (b)(4) and subsection (c)(2) of this~~ section remain subject to the requirements of §335.4 of this title. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title. Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section may also be subject to the requirements of §§335.10–335.15 of this title, as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(9) other relevant factors.

(i) Except as provided in Texas Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

~~(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;~~

~~(2) whether hazardous and nonhazardous wastes~~ that are incompatible are stored and/or processed in the same or connected units;

(3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(7) the potential for the objectionable constituent to degrade into harmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

~~(12) other relevant factors.~~

(j) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A–I or O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; 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), but is regulated under Chapter 324 of this title (relating to Used Oil). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

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(k) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 CFR Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17)–(18) and §335.112(a)(19)–(20) of this title (relating to Standards).

(l) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 CFR §262.58(a)(1), for purpose of recovery, and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title, §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to 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), and Subchapter H of this chapter.

Source: The provisions of this §335.24 adopted to be effective September 1, 1986, 11 TexReg 3693; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 4, 1999, 24 TexReg 2352; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.25. Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses

(a) Acceptable methods for disposal of poultry carcasses include the following storage, processing, and disposal methods:

(1) placement in a landfill permitted by the commission to receive municipal or industrial solid waste;

(2) composting, as defined in §332.2 of this title (relating to Definitions), and as further described in §332.23 of this title (relating to Operational Requirements);

(3) cremation or incineration;

(4) extrusion;

(5) rendering;

(6) cooking for swine food; and

(7) any other method the commission determines to be appropriate.

(b) Prior to disposition by any method listed in subsection (a) of this section, poultry facilities may:

(1) store poultry carcasses on site for no more than 72 hours provided that storage is in a varmint-proof receptacle to prevent odor, leakage, or spillage, but

(2) shall freeze, or refrigerate at a temperature of 40 degrees Fahrenheit or less, any poultry carcasses which require on-site storage for more than 72 hours.

(c) Poultry carcasses may not be disposed of by burial on-site except in the event of a major die-off that exceeds the capacity of a poultry facility to store and process poultry carcasses by the normal means used by the facility. A mortality rate of 0.3% or more per day of the facility's total poultry inventory shall be deemed a major die-off for the purposes of this section. This subsection supersedes any provisions of a permit or other authorization issued by the commission or its predecessor agencies which may have authorized on-site burial of poultry carcasses. This section does not authorize violation of any applicable regulations or laws.

(d) Transportation of poultry carcasses to an off-site location for final disposition shall be in accordance with applicable local, state or federal regulations or laws.

Source: The provisions of this §335.25 adopted to be effective September 5, 1999, 24 TexReg 6790

§ 335.28. Adoption of Memoranda of Understanding by Reference

(a) The memorandum of understanding (effective July 14, 1987) between the attorney general of Texas and the Texas Water Commission, which concerns public participation in the state hazardous waste enforcement process, is adopted by reference.

(b) The memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission, which concerns radiation control functions and mutual cooperation, is adopted by reference under §7.118 of this title (relating to Memorandum of Understanding between the Texas Department of Health and the

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~~Texas Natural Resource Conservation Commission~~ Regarding Radiation Control Functions.

(c) Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Source: The provisions of this §335.28 adopted to be effective December 1, 1987, 12 TexReg 4193; amended to be effective May 31, 1998, 23 TexReg 5439; amended to be effective November 15, ~~2001, 26 TexReg 9135.~~

§ 335.29. Adoption of Appendices by Reference

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

(1) Appendix I—Representative Sampling Methods;

(2) Appendix II—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through August 31, 1993, (58 FR 46040));

(3) Appendix III—Chemical Analysis Test Methods (as amended through August 31, 1993, (58 FR 46040));

(4) Appendix VII—Basis for Listing Hazardous Waste (as amended through August 6, 1998, (63 FR 42110));

(5) Appendix VIII—Hazardous Constituents (as amended through May 4, 1998, (63 FR 24596)); and

(6) Appendix IX—Wastes Excluded Under §260.20 and §260.22 (as amended through October 19, 1999, (64 FR 56256)).

Source: The provisions of this §335.29 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 4, 1999, 24 TexReg 2352; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.30. Appendix I

The following appendix will be used for the purposes of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General).

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When using the Uniform Waste Manifest for rail or water (bulk shipment) or international shipments refer to the applicable TWC regulations

REPORT SPILLS AND/OR DISCHARGES TO THE TEXAS SPILL RESPONSE CENTER AT 512/463-7727 (24 HOURS)

INSTRUCTIONS TO GENERATOR Please Type or Print Clearly)

(1) Enter the Generator's U.S. EPA twelve digit identification number and the unique five digit number assigned to this manifest by the generator if you are shipping hazardous waste

(2) Enter the total number of pages used to complete this manifest

(3) Enter the company name and mailing address

(4) Provide a phone number where an authorized agent of your firm may be reached in the event of an emergency

(5) Enter the company name of the first transporter and their U.S. EPA ID Number

(6) If applicable, enter the company name of the second transporter and their U.S. EPA ID Number. If more than two transporters are used, enter each additional transporter's information on the Continuation Sheet (EPA form 8700-22A)

(7) Enter the company name, site address, and U.S. EPA ID Number of the facility designated to receive the waste listed on this manifest

(8) **COMPLETE ALL STATE OF TEXAS INFORMATION A. THROUGH H. IN THE SHADED AREAS**

(9) Complete the waste description table as follows

(A) ITEM 11A—When shipping an EPA/DOT regulated hazardous waste or material in conjunction with solely state regulated waste enter an "X" in the HM box before each EPA/DOT regulated waste/material description.

(B) ITEM 11—Enter the U.S. DOT Proper Shipping Name, Hazard Class, and ID Number (UN/NA) for each waste identified. If it is a Class I nonhazardous waste use the Texas Waste Code description.

(C) ITEM 12—Enter the number of containers for each waste and the appropriate abbreviation for type located in Subchapter A of the TDWR Industrial Solid Waste Rules.

(D) ITEM 13—Enter the total quantity of waste described on each line.

(E) ITEM 14—Enter the appropriate letter from the table below for the unit of measure.

G = Gallons (liquids only)	L = Liter (liquids only)
P = Pounds	K = Kilograms
T = Tons (2000 lbs.)	M = Metric Tons (1000 kg.)
Y = Cubic Yards	N = Cubic Meters

(F) ITEM 1—Enter the appropriate TWC State Waste Code for each waste you are shipping.

(10) The Generator must read, sign (by hand), and date the certification statement. If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water or air) inserted in the space below. In signing the waste minimization certification statement, those generators shipping hazardous waste who have not been exempted by statute or regulation from the duty to make a waste minimization certification are also certifying that they have complied with the waste minimization requirements.

(11) The manifest must be signed and dated by the first transporter in the presence of the Generator. If more than one transporter is to be used, the Generator must provide additional copies for their use.

*(12) Generator retains green copy, sending remaining copies with the driver.

INSTRUCTIONS FOR THE TRANSPORTER (Please Type or Print Clearly)

(1) As driver of the transport vehicle, you are responsible for ensuring that all waste received by you arrives at the specified destination.

(2) Sign and date the space provided certifying the waste amounts in **PART I** were received for transport. **NOTE:** If you are unable to carry out the delivery of the shipment as specified, dial the emergency phone numbers given in **PART I** notifying the **GENERATOR**.

(3) Upon delivery of the shipment, the **TSD** Facility Owner/Operator is to sign for the shipment in your presence and fill in "date received".

*(4) Separate the yellow copy and retain for your records. Leave the remaining copies with the **TSD** Facility Owner/Operator.

INSTRUCTIONS TO TREATMENT, STORAGE AND DISPOSAL (TSD) FACILITY OWNER/OPERATOR (Please Type or Print Clearly)

(1) The authorized representative of the designated (or alternate) facility's owner or operator must note in **ITEM 19** any significant discrepancy between the waste described on the manifest and the waste actually received at the facility.

(2) Enter date received and sign in the presence of the driver declaring receipt of the wastes and verifying the quantities in the table in **PART I**.

(4) Retain the pink copy for your records and return the completed original (white) copy to the **GENERATOR**.

* U.S. EPA and TWC regulations require that copies of this Uniform Hazardous Waste Manifest be retained for a period of three (3) years in your company records. Do not send to TWC unless otherwise notified by these departments.

Source: The provisions of this §335.30 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective November 20, 1996, 21 TexReg 10983

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§ 335.31. Incorporation of References

When used in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations (CFR) §260.11 are incorporated by reference as amended and adopted in the CFR through May 14, 1999 (64 FR 26315).

Source: The provisions of this §335.31 adopted to be effective November 20, 1996, 21 TexReg 10983; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective November 15, 2001, 26 TexReg 9135.

SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

§ 335.41. Purpose, Scope and Applicability

(a) The purpose of this chapter is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which have been identified by the administrator of the EPA in 40 Code of Federal Regulations (CFR) Part 261.

(b) 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) and §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §335.1 of this title (relating to Definitions).

(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 and Subchapter F of this chapter do not apply to the owner or operator of a publicly-owned treatment works (POTW) which processes, stores, or disposes of hazardous waste.

(d) Subchapter E of this chapter and Subchapter F of this chapter do not apply to:

(1) the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §335.1 of this title, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 CFR §268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 40 CFR §264.17(b);

(2) persons engaged in processing or containment activities during immediate response to a discharge of a hazardous waste; an imminent and substantial threat of discharge of hazardous waste; a discharge of a material which, when discharged, becomes a hazardous waste; or an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §335.1 of this title, except that:

(A) an owner or operator of a facility otherwise regulated under Subchapter E of this chapter must comply with all applicable requirements of §335.112(a)(2) and (3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(B) an owner or operator of a facility otherwise regulated under Subchapter F of this chapter must comply with all applicable requirements of §335.152(a)(2) and (3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(C) any person who continues or initiates hazardous waste processing or containment activities after the immediate response is over is subject to all applicable requirements of Subchapter E of this chapter, Subchapter F of this chapter and Chapter 305 of this title (relating to Consolidated Permits); and

(D) in the case of an explosives or munitions emergency response, if a federal, state, tribal, or local official acting within the scope of his or her official responsibilities, or an explosives or emergency response specialist, determines that immediate removal of the material is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

(3) persons adding absorbent material to waste in a container, as defined in §335.1 of this title and

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persons adding waste to absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container, and that in the case of permitted facilities, 40 CFR §§264.17(b), 264.171, and 264.172 are complied with, and for all other facilities, 40 CFR §§265.17(b), 265.171, and 265.172 are complied with.

(4) A farmer disposing of waste pesticides from his own use in compliance with §335.77 of this title (relating to Farmers).

(e) Subchapter E of this chapter does not apply to:

(1) a person who stores, processes or disposes of hazardous waste on-site and meets the requirements of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); or

(2) the owner or operator of a solid waste facility who stores, processes, or disposes of hazardous waste received from a conditionally exempt small quantity generator.

(f) The following requirements apply to residues of hazardous waste in containers.

(1) Subchapters B–F 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; Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities; and Land Disposal Restrictions) do not apply to any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subsection. This exemption does not apply to any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty.

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply:

(A) a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) all wastes have been removed that can be using the practices commonly employed to remove materials from that type of container, e.g. pouring, pumping, and aspirating; and

(ii) no more than 2.5 centimeters (one inch) residue remains on the bottom of the container inner liner; or

(iii) no more than 3.0% by weight of the tot capacity of the container remains in the container inner liner if the container is less than or equal 110 gallons in size, or no more than 0.3% by weigl of the total capacity of the container remains in th container or inner liner if the container is greate than 110 gallons in size.

(B) a container that has held a hazardous wast that is a compressed gas is empty when the pressur in the container approaches atmosphere;

(C) a container or an inner liner removed from container that has held an acute hazardous wast listed in 40 CFR §§261.31, 261.32, or 261.33(e) empty if:

(i) the container or inner liner has been tripl rinsed using a solvent capable of removing th commercial chemical product or manufacturin chemical intermediate;

(ii) the container or inner liner has been cleane by another method that has been shown in th scientific literature, or by tests conducted by th generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner tha prevented contact of the commercial chemical prod uct or manufacturing chemical intermediate witl the container, has been removed.

(g) Subchapters B–F and O of this chapter do no apply to hazardous waste which is managed as recyclable material described in §335.24(b) and (c of this title (relating to Requirements for Recyclabl Materials and Nonhazardous Recyclable Materials) except to the extent that requirements of these subchapters are referred to in Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 324 of this title (relating to Used Oil).

(h) Subchapter E of this chapter and Subchapter F of this chapter apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in Subchapter O of this chapter.

~~(i) Except as provided in §335.47 of this title,~~ Subchapter F of this chapter does not apply to persons disposing of hazardous waste by means of underground injection. However, Subchapter F of this chapter does apply to the aboveground storage or processing of hazardous waste before it is injected underground.

(j) Except as specified in Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule),

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Subchapters B-F and O of this chapter and Chapter 305 of this title do not apply to universal wastes, universal waste handlers, or universal waste transporters as defined in §335.261 of this title (relating to Universal Waste Rule). Universal wastes are not fully regulated hazardous wastes, but are subject to regulation under Subchapter H, Division 5 of this chapter.

Source: The provisions of this §335.41 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective September 1, 1986, 11 TexReg 3695; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 30, 2000, 25 TexReg 3547; amended to be effective April 12, 2001,26 TexReg 2741; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.43. Permit Required

(a) Except as provided in §335.2 of this title (relating to Permit Required), no person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Natural Resource Conservation Commission.

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

Source: The provisions of this §335.43 adopted to be effective September 1, 1986, 11 TexReg 3695; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective August 14, 1990, 15 TexReg 4397; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.44. Application for Existing On-Site Facilities

(a) In order to satisfy the application deadline specified in §335.2(c) of this title (relating to Permit Required), an application must be submitted prior to that date which contains information defining the following:

(1) owner(s) and operator(s) of the facility;

(2) description of the site;

(3) description of the facility and all facility components;

(4) identification of wastes generated, stored, processed, or disposed, together with quantities and sources; and

(5) methods and types of operations used in the storage, processing, or disposal of wastes.

(b) In addition to the information required in subsection (a) of this section, a complete application, required prior to action on an application by the commission, must include the following:

(1) engineering plans and specifications and other documentation necessary to demonstrate that all components of the facility design, construction, and operation conform to standards established by the commission; and

(2) information describing actions necessary to bring existing facilities into compliance with commission standards and a schedule for completion of such actions.

(c) An application form can be obtained from the executive director for each geographical location for which the storage, processing, or disposal of hazardous waste is proposed.

(d) The application shall be signed by the applicant or by a duly authorized agent, employee, officer, or representative of the applicant and shall be verified before a notary public.

Source: The provisions of this §335.44 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective September 1, 1986, 11 TexReg 3695; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.45. Effect on Existing Facilities

(a) Effect on permitted off-site facilities. Subchapters B–E of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; and Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), provide minimum requirements applicable to all persons generating, transporting, storing, processing, and disposing of hazardous waste. All persons holding permits or any other authorizations from the commission or its predecessor agencies, which relate to hazardous waste, shall meet the requirements of Subchapter E of this chapter until final administrative disposition of their permit application pursuant to standards prescribed by Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) is made. However, where the permit or authorization specifies additional or more stringent requirements, the provisions of the permit or authorization shall be complied with.

(b) Effect on off-site facilities without a permit to re-use, recycle, or reclaim hazardous waste, or to burn hazardous waste in boilers or industrial

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furnaces. 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., concerning the re-use, recycling, or reclamation of hazardous waste, or relating to the burning of hazardous waste in boilers or industrial furnaces, 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 Natural Resource Conservation Commission approves or denies the application. In cases where the aforementioned federal statutory or regulatory amendments become effective prior to the effective date of state statutory or regulatory amendments under Texas Health and Safety Code, Chapter 361, submittal to the executive director of a copy of the properly filed EPA permit application within 30 days of the effective date of the applicable state statutory or regulatory requirements shall constitute compliance with this subsection with regard to application filing requirements. Facilities that have received a permit for the re-use, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter 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) or to modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) to reflect new regulatory requirements.

Source: The provisions of this §335.45 adopted to be effective September 1, 1986, 11 TexReg 3695; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 15, 2001, 26 TexReg 9135.

~~§ 335.46. Sharing of Information~~

Any information obtained or used by the commission in the administration of a hazardous waste program authorized under the Resource Conservation and Recovery Act of 1976, §3006 and 40 Code of Federal Regulations (CFR) Part 271 shall be available to the Environmental Protection Agency upon request without restriction. If the information has been submitted to the commission under a claim of confidentiality, the commission shall submit that claim to the Environmental Protection Agency when providing information under this section. Any information obtained from the commission and subject to a claim of confidentiality will be treated by the Environmental Protection Agency in accordance with 40 CFR Part 2. If the Environmental Protection Agency obtains information that is not claimed to be confidential, the Environmental Protection Agency may make that information available to the public without further notice.

Source: The provisions of this §335.46 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.47. Special Requirements for Persons Eligible for a Federal Permit by Rule

(a) The following persons are eligible for a permit by rule under 40 Code of Federal Regulations (CFR) §270.60:

(1) the owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal;

(2) the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment; and

(3) the owner or operator of an injection well used to dispose of hazardous waste.

~~(b) To be eligible for a permit by rule, such person~~ shall comply with the requirements of 40 CFR §270.60 and the following rules:

(1) 40 CFR §264.11 (EPA identification number);

(2) 40 CFR §264.73(a) and (b)(1) (operating record);

(3) 40 CFR §264.75 (biennial report);

(4) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); and

(5) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners

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~~or Operators of Storage, Processing, or Disposal Facilities).~~

(c) In addition to the requirements stated in subsection (b) of this section, the owner or operator of an injection well used to dispose of hazardous waste shall:

(1) comply with the applicable personnel training requirements of 40 CFR §264.16;

(2) when abandonment is completed, submit to the executive director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in §331.46 of this title (relating to Plugging and Abandonment Standards); and

(3) for underground injection control permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). ~~Where the underground~~ injection well is the only unit at ~~a facility~~ which requires a permit, ~~comply with~~ 40 CFR §270.14(d) (concerning ~~information~~ requirements for solid waste ~~management units).~~ Persons who dispose of hazardous waste by means of underground injection must obtain a permit under the Texas Water Code, Chapter 27.

(d) In addition to the requirements stated in subsection (b) of this section, the owner or operator of a POTW which accepts hazardous waste for treatment shall:

(1) meet all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance; and

(2) for National Pollutant Discharge Elimination System permits issued after November 8, 1984, comply with §335.167 of this title.

Source: The provisions of §335.47 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective November 15, 2001, 26 TexReg 9135.

SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

§ 335.61. Purpose, Scope and Applicability

(a) Except as provided in subsection (b) of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) The provisions of this subchapter with which a generator who stores, processes or disposes of hazardous waste on-site must comply are §335.62 of this title (relating to Hazardous Waste Determination), §335.63 of this title (relating to EPA Identification Numbers), §335.70 of this title (relating to Recordkeeping), §335.73 of this title (relating to Additional Reporting), and, if applicable, §335.77 of this title (relating to Farmers), and §335.69 of this title (relating to Accumulation Time).

(c) Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators.

(d) An owner or operator who initiates a shipment of hazardous waste from a processing, storage or disposal facility must comply with the generator standards contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and this subchapter. The provisions of §335.69 of this title (relating to Accumulation Time) are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §335.69 of this title only apply to owners or operators who are shipping hazardous waste which they generate at that facility.

(e) A farmer who generates waste pesticides which are hazardous waste and who complies with §335.77 of this title is not required to comply with this chapter with respect to those pesticides.

~~(f) A generator who treats, stores, or disposes of~~ hazardous waste on-site must comply with ~~the~~ applicable standards and permit requirements set forth in Subchapters E, F, H, and O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste and with Chapter 305 of this title ~~(relating to Consolidated Permits).~~

(g) Section 335.78(c) and (d) of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) must be used to determine the applicability of provisions of this subchapter that are dependent on calculations of the quantity of hazardous waste generated per month.

(h) The requirements of this subchapter do not apply to persons responding to an explosives or munitions emergency in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

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Source: The provisions of this §335.61 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective September 1, 1986, 11 TexReg 3695; amended to be effective April 8, 1987, 12 TexReg 999; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 12, 2001, 26 TexReg 2741; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.62. Hazardous Waste Determination and Waste Classification

A person who generates a solid waste must determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of Subchapter R of this chapter (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

Source: The provisions of this §335.62 adopted to be effective November 27, 1992, 17 TexReg 8010; amended to be effective October 19, 1998, 23 TexReg 10878.

§ 335.63. EPA Identification Numbers

(a) A generator must not store, process, dispose of, transport, or offer for transportation, hazardous waste without having received an Environmental Protection Agency (EPA) identification number.

(b) A generator must not offer hazardous waste to transporters or to storage, processing or disposal facilities that have not received an EPA identification number.

Source: The provisions of this §335.63 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.65. Packaging

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 Code of Federal Regulations Parts 173, 178, and 179.

Source: The provisions of this §335.65 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.66. Labeling

Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations Part 172.

Source: The provisions of this §335.66 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.67. Marking

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations (CFR) Part 172.

(b) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR §172.304: HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the EPA.

Source: The provisions of this §335.67 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.68. Placarding

Before transporting or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 Code of Federal Regulations Part 172, Subpart F.

Source: The provisions of this §335.68 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.69. Accumulation Time

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f)–(k) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, and CC, as adopted by reference under §335.112(a) of this title; and/or

(B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title and maintains the fol-

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lowing records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(D) the waste is placed in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days.

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) the generator complies with the following:

(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title;

(B) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title (relating to Purpose, Scope, and Applicability); and

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

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title (relating to Consolidated Permits) applicable to such owners and operators, unless he has been granted an extension to the 90-day period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) applicable to generators of Class 1 waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) of this section provided he:

(1) complies with 40 CFR §§265.171, 265.172 and 265.173(a), as adopted by reference under §335.112(a) of this title (relating to Standards); and

(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 CFR §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;

(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title, except 40

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CFR §265.176 and §265.178;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title;

(4) the generator complies with the requirements of:

(A) subsections (a)(2) and (3) of this section;

(B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title; and

(C) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(5) the generator complies with the following requirements:

(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) Identification Number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);

(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

~~(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is~~

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~~not subject to this section.~~

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;

(2) the F006 waste is legitimately recycled through metals recovery;

(3) no more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) the F006 waste is managed in accordance with the following:

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC; and/or

(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(I) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(II) documentation that the unit is emptied at least once every 180 days;

(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title;

(C) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(E) the generator complies with the following:

(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title;

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(iii) §335.113 of this title.

(k) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1)–(4) of this section.

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title applicable to such owners and operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.

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Source: The provisions of this §335.69 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective January 5, 1988, 12 TexReg 4846; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective March 18, 2001, 26 TexReg 2036; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.70. Recordkeeping

(a) A generator of hazardous waste must keep records of any test results, waste analyses, or other determinations made in accordance with §335.62 of this title (relating to Hazardous Waste Determination) for at least three years from the date that the waste was last sent to an on-site or off-site storage, processing or disposal facility.

(b) The generator shall keep a copy of each annual report and exception report required by this title for a period of at least three years from the due date of the report.

(c) The periods of record retention required by subsections (a) and (b) of this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the executive director.

Source: The provisions of this §335.70 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.71. Biennial Reporting

In addition to annual reporting which is required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), in every even-numbered year facilities subject to the United States Environmental Protection Agency biennial reporting requirements shall submit to the commission information as required by 40 Code of Federal Regulations §262.41. Upon request, this supplemental information shall be prepared in a form provided or approved by the executive director and submitted within the specified timeframe. Activities covered in the report shall be for the previous odd-numbered report year. Facilities subject to the United States Environmental Protection Agency biennial reporting requirements include all large quantity generators of hazardous waste for any month during the previous odd-numbered report year.

Source: The provisions of this §335.71 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 2515; amended to be effective February 4, 1994, 19 TexReg 509.

§ 335.73. Additional Reporting

The executive director may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 Code of Federal Regulations Part 261, Subparts C and D.

Source: The provisions of this §335.73 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.74. Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month

A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is exempt from the recordkeeping and reporting requirements of this subchapter, except for §335.70(a) and (c) of this title (relating to Recordkeeping); and §335.73 of this title (relating to Additional Reporting); and §335.13(a) and (g) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste and Primary Exporters of Hazardous Waste). Such generators are subject to the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).

Source: The provision of this §335.74 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 23, 1993, 18 TexReg 8218.

§ 335.75. Notification Requirements for Interstate Shipments

In the case of interstate shipments of hazardous waste for which a manifest has not been returned within 45 days of acceptance of the waste by the initial transporter, the generator shall notify the appropriate regulatory agency of the state in which the designated facility is located and the appropriate regulatory agency of the state in which the shipment may have been delivered. If a state required to be notified under this section has not received interim or final authorization pursuant to the Resource Conservation and Recovery Act of the 1976, §3006, the generator shall notify the administrator that the manifest has not been returned.

Source: The provisions of this §335.75 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106.

§ 335.76. Additional Requirements Applicable to International Shipments

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, as amended and adopted

rrough April 12, 1996 (61 FR 16290) provide oth-rwise, a primary exporter of hazardous waste must ɔmply with the special requirements of this section s they apply to primary exporters, and a trans-ɔrter transporting hazardous waste for export must ɔmply with applicable requirements of §335.11 of ıis title (relating to Shipping Requirements for ransporters of Hazardous Waste or Class 1 Waste) ıd §335.14 of this title (relating to Recordkeeping equirements Applicable to Transporters of Hazard-us Waste or Class 1 Waste) and Subchapter D of ıis chapter (relating to Standards Applicable to ransporters of Hazardous Waste). 40 CFR §262.58 ets forth the requirements of international agree-ıents between the United States and receiving ɔuntries which establish different notice, export, nd enforcement procedures for the transportation, rocessing, storage, and disposal of hazardous waste ır shipments between the United States and those ɔuntries.

(b) Exports of hazardous waste are prohibited xcept in compliance with the applicable require-ıents of this subchapter, the special requirements of ıis section, and §335.11 of this title (relating to hipping Requirements for Transporters of Hazard-us Waste or Class 1 Waste) and §335.14 of this title elating to Recordkeeping Requirements Appli-able to Transporters of Hazardous Waste or Class 1 Vaste) and Subchapter D of this chapter (relating to tandards Applicable to Transporters of Hazardous Vaste). Exports of hazardous waste are prohibited nless:

(1) notification in accordance with the regula-ons contained in 40 CFR §262.53, as amended and dopted through April 12, 1996 (61 FR 16290) has een provided;

(2) the receiving country has consented to accept ıe hazardous waste;

(3) a copy of the EPA acknowledgment of consent ɔ the shipment accompanies the hazardous waste hipment and, unless exported by rail, is attached to ıe manifest (or shipping paper for exports by water ɔulk shipment));

(4) the hazardous waste shipment conforms to he terms of the receiving country's written consent s reflected in the EPA acknowledgment of consent; nd

(5) the primary exporter complies with the mani-est requirements of §335.10(a)-(d) of this title (re-ating to Shipping and Reporting Procedures Appli-able to Generators of Hazardous Waste or Class 1 Vaste and Primary Exporters of Hazardous Waste) xcept that:

(A) in lieu of the name, site address, and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(B) in lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(C) in special handling instructions and additional information, the primary exporter must identify the point of departure from the United States;

(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title: "and conforms to the terms of the attached EPA acknowledgment of consent";

(E) the primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in §335.12(c)(1) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) as the subsection applies to hazardous waste between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazar-dous waste;

(F) in lieu of the requirements of §335.10(a) of this title, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(i) renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with the regulations contained in 40 CFR §262.53(c), which are in effect as of November 8, 1986, and obtain an EPA acknowledgment of consent prior to delivery; or

(ii) instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(iii) instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;

(G) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest

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except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(H) the primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United States customs official at the point the hazardous waste leaves the United States in accordance with §335.11(g)(4) of this title.

(c) A primary exportor must submit an exception report to the executive director if:

(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exportor has not received written confirmation from the foreign consignee that the hazardous waste was received; or

(3) the waste was returned to the United States.

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title for the manifest except that:

(1) in place of the generator's name, address, and EPA identification number, the name and address of the foreign generator and the importer's name, address, and EPA identification number must be used;

(2) in place of the generator's signature on the certification statement, the United States importer or his agent must sign and date the certification and obtain the signature of the initial transporter; and

(3) a person who imports hazardous waste must obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

~~(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the~~ requirements of the regulations ~~contained~~ in 40 CFR §262.58 (International Agreements), as amended ~~and adopted through April 12, 1996 (61 FR 16290).~~

(g) Except to the extent that they are clearly inconsistent with Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.

~~(h) Transfrontier shipments of hazardous waste~~ for recovery within the Organization for ~~Economic~~ Cooperation and Development ~~are~~ subject to 40 CFR Part 262, Subpart H, which is adopted by reference ~~as~~ amended and adopted in the CFR ~~through April 12, 1996, at 61 FedReg 16290.~~

Source: The provisions of this §335.76 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.77. Farmers

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with this chapter for those wastes provided that he triple rinses each emptied pesticide container in accordance with § 335.41(f)(2)(C) of this title (relating to Purpose, Scope, and Applicability) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

Source: The provisions of this §335.77 adopted to be effective July 14, 1987, 12 TexReg 2106.

§ 335.78. Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

~~(b) Except for those wastes identified in subsections (e)–(g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C–H and O of this chapter (relating to 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; Permitting Standards for Owners and~~

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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; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A–C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:

(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c)–(f), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;

(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);

(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials);

(4) is used oil managed under the requirements of §335.24(j) of this title and Chapter 324 of this title (relating to Used Oil);

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements); or

(6) is universal waste managed under §335.41(j) of this title (relating to Purpose, Scope and Applicability) and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste which is generated or collected for the purpose of treatability studies;

(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C–H and O of this chapter (relating to 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; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title

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(relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); and the notification requirements of the Resource Conservation and Recovery Act, §3010.

(1) a total of one kilogram of acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination).

(2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C–H and O of this chapter (relating to 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; Permitting 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; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of its acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;

(E) permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5–257.30;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title.

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~~(2) The conditionally exempt small quantity generator~~ may accumulate hazardous waste on-site. If such generator accumulates at any time more than a total of 1000 kilograms of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D-H and O of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting 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; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed ~~1000 kilograms;~~

(3) A conditionally exempt small quantity generator may either process or dispose of its hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste);

(E) permitted, licensed, or registered by a state to manage non-municipal or industrial non-hazardous waste and, if managed in a non-municipal or industrial non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5–257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to additional requirements for industrial non-hazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

Source: The provision of this §335.78 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective March 6, 1996, 21 TexReg 2400;

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amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective November 15, 2001, 26 TexReg 9135.

SUBCHAPTER D. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

§ 335.91. Scope

(a) This subchapter establishes standards for transporters transporting hazardous waste to off-site storage, processing, or disposal facilities. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) This subchapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of storage, processing or disposal facilities.

(c) A transporter of hazardous waste must also comply with any standards applicable to generators of hazardous waste if he:

(1) transports hazardous waste into the state from a foreign country; or

(2) mixes hazardous waste of different Department of Transportation shipping descriptions by placing them into a single container.

(d) Transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards contained in this chapter.

~~(e) A transporter of hazardous waste subject to~~ the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262, or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste), or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), that is being imported from or exported to any of the countries listed in 40 CFR §262.58(a)(1) for purposes of recovery is subject to this subchapter and to all other relevant requirements of 40 CFR Part 262, Subpart H, including, but not limited to, 40 CFR §262.84 for tracking ~~documents.~~

(f) The regulations in this chapter do not apply to transportation during an explosives or munitions emergency response conducted in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

(g) 40 CFR §266.203, as adopted by reference under Subchapter H, Division 6 of this chapter (relating to Military Munitions), identifies how the requirements of this subchapter apply to military munitions classified as solid waste under 40 CFR §266.202.

Source: The provisions of this §335.91 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 12, 2001, 26 TexReg 2741; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.92. EPA Identification Number

A transporter must not transport hazardous wastes without having received an Environmental Protection Agency (EPA) identification number.

Source: The provisions of this §335.92 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.93. Hazardous Waste Discharges

(a) In the event of a discharge of hazardous waste during transportation, the transporter shall notify the commission as soon as possible and not later than 24 hours after the occurrence, according to the provisions of the Texas Water Code, §26.039, and the procedures set out in the State Oil and Hazardous Substances Spill Contingency Plan, and also take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge).

(b) If a discharge of hazardous waste occurs during transportation and a commission official acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must also:

(1) give notice, if required by 49 Code of Federal Regulations (CFR) §171.15, to the National Response Center (800-424-8802 or 202-426-2675); and

(2) report in writing as required by 49 CFR §171.16 to the Director, Office of Hazardous Waste Material Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR §153.203 for oil and hazardous substances.

~~(e) A transporter must clean up any hazardous~~ waste discharge that occurs during transportation or take such action as required in §327.5 of this title (relating to Actions Required) so that the hazardous ~~waste discharge no longer presents a hazard to~~

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~~human health or the environment.~~

Source: The provisions of this §335.93 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.94. Transfer Facility Requirements

(a) Unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §335.65 of this title (relating to Packaging) at a transfer facility ~~owned or operated by a registered transporter~~ for a period of ten days or less is not subject to the requirement for a permit under §335.2 of this title (relating to Permit Required), with respect to the storage of those wastes provided that the transporter complies with the following sections:

(1) 40 Code of Federal Regulations (CFR) §265.14 (relating to Security);

(2) 40 CFR §265.15 (relating to General Inspection Requirements);

(3) 40 CFR §265.16 (relating to Personnel Training);

(4) 40 CFR Part 265, Subpart C;

(5) 40 CFR Part 265, Subpart D (except §265.56(j)) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator); and

(6) 40 CFR Part 265, Subpart I.

(b) The executive director may require a permit for that portion of a facility otherwise exempted from that requirement under subsection (a) of this section, with respect to the storage of hazardous waste in containers, if the facility's operation also includes other storage and processing of hazardous waste which is not exempt under subsection (a) of this section.

Source: The provisions of this §335.94 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 15, 2001, 26 TexReg 9135.

SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

§ 335.111. Purpose, Scope, and Applicability

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. Except as provided in 40 Code of Federal Regulations (CFR) §265.1080(b), this subchapter and the standards of 40 CFR §264.552, §264.553, and §264.554 apply to owners and operators of hazardous waste storage, processing, or disposal facilities who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act, §3005(e), except as specifically provided for in §335.41 of this title (relating to Purpose, Scope and Applicability).

(b) EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027 must not be managed at facilities subject to regulation under this subchapter, unless:

(1) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(2) the waste is stored in tanks or containers;

(3) the waste is stored or processed in waste piles that meet the requirements of 40 CFR §264.250(c) as well as all other applicable requirements of 40 CFR Part 265, Subpart L, and §335.120 of this title (relating to Containment for Waste Piles);

(4) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR §265.352; or

(5) the waste is burned in facilities that thermally process the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR §265.383.

(c) The requirements of this section apply to owners or operators of all facilities which process, store or dispose of hazardous waste referred to in 40 CFR Part 268, and the 40 CFR Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards incorporated by reference in §335.112 of this title (relating to Standards).

Source: The provisions of this §335.111 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969; amended to be effective April 12, 2001, 26 TexReg 2741; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.112. Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR

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22685) and as further amended as indicated in each paragraph of this subsection:

(1) Subpart B—General Facility Standards (as amended through December 8, 1997 (62 FR 64636));

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures, except 40 CFR §265.56(d);

(4) Subpart E—Manifest System, Recordkeeping and Reporting (as amended through December 8, 1997 (62 FR 64636)), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77;

(5) Subpart F—Groundwater Monitoring (as amended through December 23, 1991 (56 FR 66369)), except 40 CFR §265.90 and §265.94;

(6) Subpart G—Closure and Post-Closure (as amended through August 18, 1992 (57 FR 37194)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

~~(7) Subpart H—Financial Requirements (as~~ amended through September 16, 1992 ~~(57~~ FR 42832)); except 40 CFR ~~§§265.140,~~ 265.141, 265.142(a)(2), 265.142~~(b)–(c),~~ 265.143(a)~~–(g)~~, 265.144(b)~~–~~(c), 265.145~~(a)–(g)~~, 264.146, 265.147(a)~~–(d)~~, 265.~~147(f)–(k), 265.148, 265.149, and 265.150;~~

(8) Subpart I—Use and Management of Containers (as amended through November 25, 1996 (61 FR 59932));

(9) Subpart J—Tank Systems (as amended through November 25, 1996 (61 FR 59932));

(10) Subpart K—Surface Impoundments (as amended through November 25, 1996 (61 FR 59932));

(11) Subpart L—Waste Piles (as amended through January 29, 1992 (57 FR 3493)), except 40 CFR §265.253;

(12) Subpart M—Land Treatment, except 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N—Landfills (as amended through July 10, 1992 (57 FR 30658)), except 40 CFR §§265.301(f)–265.301(i), 265.314, and 265.315;

(14) Subpart O—Incinerators (as amended through September 30, 1999 (64 FR 52828));

(15) Subpart P—Thermal Treatment (as amended through July 17, 1991 (56 FR 32692));

(16) Subpart Q—Chemical, Physical, and Biological Treatment;

~~(17) Subpart R—Underground Injection;~~

(18) Subpart W—Drip Pads (as amended through December 24, 1992 (57 FR 61492));

(19) Subpart AA—Air Emission Standards for Process Vents (as amended through December 8, 1997 (62 FR 64636));

(20) Subpart BB—Air Emission Standards for Equipment Leaks (as amended through December 8, 1997 (62 FR 64636));

(21) Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through January 21, 1999 (64 FR 33820));

(22) Subpart DD—Containment Buildings (as amended through August 18, 1992 (57 FR 37194));

(23) Subpart EE—Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997 (62 FR 6622)); and

(24) the following appendices contained in 40 CFR Part 265:

(A) Appendix I—Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix III—EPA Interim Primary Drinking Water Standards;

(C) Appendix IV—Tests for Significance;

(D) Appendix V—Examples of Potentially Incompatible Waste; and

(E) Appendix VI—Compounds With Henry's Law Constant Less Than 0.1 Y/X.

(b) The regulations of the EPA that are adopted by reference in this section are adopted subject to the following changes.

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

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

(3) Reference to RCRA, §3008(h) is changed to Texas Water Code, §7.031(c)–(e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

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

(B) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(C) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(D) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

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(E) 40 CFR §265.1 is changed to §335.111 of this title (relating to Purpose, Scope, and Applicability);

(F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements);

(G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting);

(H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste);

~~(I) 40 CFR §270.1 is changed to §335.2 of this title (relating to Permit Required);~~

~~(J) 40 CFR §270.28 is changed to §305.50 of this~~ title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid ~~Waste Permit);~~

(K) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendment); and

(L) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(5) 40 CFR Parts 260–270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

~~(7) Reference to 40 CFR §§265.71, 265.72, 265~~. 76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.115 of this title (relating to ~~Additional Reports), respectively.~~

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 and §335.117 of this title, in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Natural Resource Conservation Commission.

(c) A copy of 40 CFR, Part 265 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

Source: The provisions of this §335.112 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective October 29, 1990, 15 TexReg 6017; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective July 16, 1991, 16 TexReg 3730; amended to be effective December 13, 1991,16TexReg6936;amended tobe effective July 29, 1992, 17 TexReg 5017; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective May 20, 1999, 24 TexReg 3726; amended to be effective October 7, 1999, 24 TexReg 8562; amended to be effective March 21, 2000, 25 TexReg 2394; amended to be effective April 12, 2001, 26 TexReg 2741; amended to be effective November 18, 2001, 26 TexReg 9153.

§ 335.113. Reporting of Emergency Situations by Emergency Coordinator

If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, he must report his findings as follows.

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate local officials decide whether local areas should be evacuated.

(2) He must immediately notify the commission according to procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The report must include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and place of incident (e.g., release, fire);

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(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health or the environment outside the facility.

Source: The provisions of this §335.113 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.115. Additional Reports

~~In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and the reports described in this subchapter, the owner or operator must also report to the executive director:~~

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations (CFR) §265.56(j);

(2) groundwater contamination and monitoring data as specified in 40 CFR §265.93 and §335.117 of this title (relating to Recordkeeping and Reporting);

(3) facility closure as specified in 40 CFR §265.115; and

(4) as otherwise required by §335.112(a)(2) of this title (relating to Standards), which incorporates the requirements of 40 CFR Part 265, Subparts AA and BB.

Source: The provisions of this §335.115 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective May 20, 1999, 24 TexReg 3726; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.116. Applicability of Groundwater Monitoring Requirements

(a) On November 19, 1981, the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as provided in subsection (c) of this section.

(b) Except as provided in subsections (c) and (d) of this section, the owner or operator must install, operate, and maintain a groundwater monitoring system which meets the requirements of 40 Code of Federal Regulations §265.91, and must comply with 40 Code of Federal Regulations §265.92 and §265.93, and §335.117 of this title (relating to Recordkeeping and Reporting). This groundwater monitoring program must be carried out during the active life of the facility, and for disposal facilities during the post-closure care period as well.

(c) All or part of the groundwater monitoring requirements of this subchapter may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial, or agricultural) or to surface water. This demonstration must be in writing and must be kept at the facility. This demonstration must be certified by a qualified geologist or geotechnical engineer and must establish the following:

(1) the potential for migration of hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(A) a water balance of precipitation, evapotranspiration, runoff, and infiltration; and

(B) unsaturated zone characteristics (i.e., geologic materials, physical properties, and depth to ground water); and

(2) the potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(A) saturated zone characteristics (i.e., geologic materials, physical properties, and rate of groundwater flow); and

(B) the proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes (or knows) that groundwater monitoring of indicator parameters in accordance with 40 Code of Federal Regulations §265.91 and §265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under 40 Code of Federal Regulations §265.93(b), he may install, operate, and maintain an alternate groundwater monitoring system (other than the one described in 40 Code of Federal Regulations §265.91 and §265.92). If the owner or operator does decide to use an alternate groundwater monitoring system he must:

(1) prior to November 19, 1981, submit to the executive director a specific plan certified by a qualified geologist or geotechnical engineer which satisfies the requirements of 40 Code of Federal Regulations §265.93(d)(3), for an alternate groundwater monitoring system;

(2) prior to November 19, 1981, initiate the determinations specified in 40 Code of Federal Regulations §265.93(d)(4);

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(3) prepare and submit a written report in accordance with 40 Code of Federal Regulations §265.93(d)(5);

(4) continue to make the determinations specified in 40 Code of Federal Regulations §265.93(d)(4) on a quarterly basis until final closure of the facility; and

(5) comply with the recordkeeping and reporting requirements in §335.117 of this title (relating to Recordkeeping and Reporting).

(e) The groundwater monitoring requirements of this subchapter may be waived with respect to any surface impoundment that:

(1) is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under 40 Code of Federal Regulations §261.22 or are listed as hazardous wastes in 40 Code of Federal Regulations Part 261, Subpart D, only for this reason; and

(2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstrations must establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

(f) For owners and operators who have not established background concentrations or values in accordance with 40 Code of Federal Regulations §265.92(c) by November 19, 1982, the executive director may require the implementation of a groundwater assessment plan under 40 Code of Federal Regulations §265.93, whenever he determines that existing data indicates that there is a substantial likelihood that hazardous waste or hazardous constituents from the facility have entered the uppermost aquifer.

Source: The provisions of this §335.116 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.117. Recordkeeping and Reporting

(a) Unless the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations (CFR) §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses required in 40 CFR §265.92(c) and (d), the associated groundwater surface elevations required in 40 CFR §265.92(e), and the evaluations required in §335.93(b) of this title (relating to Hazardous Waste Discharges) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) report the following groundwater monitoring information to the executive director:

(A) during the first year, when initial background concentrations are being established for the facility, concentrations or values of the parameters listed in 40 CFR §265.92(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III of 40 CFR Part 265.

~~(B) quarterly, during the initial year of groundwa~~ter monitoring, concentrations or values of the parameters listed in 40 CFR §265.92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 CFR §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR §265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with 40 CFR §265.93(c)(1). In addition, concentration of the groundwater quality parameters listed in 40 CFR §265.92(b)(2) shall be reported annually.

(C) as a part of the annual report, results of the evaluation of groundwater surface elevations under 40 CFR §265.93(f), and a description of the response to that evaluation where applicable.

(b) If the groundwater is monitored to satisfy the requirements of 40 CFR §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses and evaluations specified in the plan which satisfies the requirements of 40 CFR §265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

~~(2) annually, until final closure of the facility,~~ submit to the executive director a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period.

(c) The owner or operator shall submit, upon request of the executive director, the following static information for each groundwater monitoring well:

(1) date of well construction;

(2) total depth of well (based on mean sea level);

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(3) type of well (ex. trench lysimeter, piezometer, well cluster, multiple screen, pressure vacuum, lysimeter);

(4) latitude/longitude (based on United States Geological Survey topographic map);

(5) geologic age of aquifer sampled;

(6) aquifer name/geologic formation and age.

(d) The owner or operator shall submit, upon request of the executive director, the following information on each sampling event for each groundwater monitoring well sampled:

(1) date of observation;

(2) depth to water level (based upon mean sea level);

(3) sample collection method (i.e. pumped well, bailer, probe, air-lift pump, jetted, peristaltic pump, centrifugal pump, or pitcher pump);

(4) depth to the top of the sample interval which is measured in the number of feet below the land surface datum (LSD);

(5) depth to the bottom of the sample interval which is measured in feet below the LSD.

Source: The provisions of this §335.117 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective May 20, 1999, 24 TexReg 3726; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.118. Closure Plan; Submission and Approval of Plan

(a) Except as provided in this section, the owner or operator must submit his closure plan to the executive director in accordance with the procedures outlined in 40 Code of Federal Regulations (CFR) 265.112. The owner or operator must submit his closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, or Texas Health and Safety Code, Chapter 361, to cease receiving wastes or close.

(b) The executive director will provide the owner or operator and the public, through newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The executive director will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved closure plan. The executive director's decision must assure that the approved closure plan is consistent with 40 CFR §§265.111–265.115, and the applicable closure requirements contained in this chapter for specific waste management methods, and contained in 40 CFR §264.1102. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

Source: The provisions of this §335.118 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.119. Post-Closure Plan; Submission and Approved of Plan

(a) The owner or operator of a facility with hazardous waste management units subject to the post-closure care requirements in 40 Code of Federal Regulations (CFR) Part 265, Subpart G, must submit his post-closure plan to the executive director at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date when he expects to begin closure must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit his post-closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

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(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, §3008, as amended, or Texas Health and Safety Code, Chapter 361, to cease receiving wastes or close.

(b) The executive director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications of the plan, including modification of the 30-year post-closure period required in 40 CFR §265.117 within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The executive director will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of its receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved post-closure plan. The executive director must ensure that the approved post-closure plan is consistent with 40 CFR §§265.117–265.120. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator. If an owner or operator plans to begin closure before November 19, 1981, he must submit the post-closure plan by May 19, 1981.

Source: The provisions of this §335.119 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.120. Containment for Waste Piles

If leachate or run-off from a pile is a hazardous waste, then either:

(1) the pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage; the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm; the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm; and collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control, systems must be emptied or otherwise managed expeditiously to maintain design capacity of the system;

(2) the pile is managed such that:

(A) the pile must be protected from precipitation and run-on by some other means; and

(B) no liquids or wastes containing free liquids may be placed in the pile.

Source: The provisions of this §335.120 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.121. General Operating Requirements (Land Treatment Facilities)

(a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less hazardous or nonhazardous by degradation, transformation, or immobilization processes occurring in or on the soil.

(b) The owner or operator must design, construct, operate, and maintain a run-control system capable of preventing flow on to the active portions of the facility during peak discharge from at least a 100-year storm.

(c) The owner or operator must design, construct, operate, and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 100-year storm.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(e) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

Source: The provisions of this §335.121 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106.

§ 335.122. Recordkeeping

The owner of a land treatment facility must keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in the facility in the operating record required in 40 Code of Federal Regulations §265.73.

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Source: The provisions of this §335.122 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.123. Closure and Post-Closure (Land Treatment Facilities)

(a) In the closure plan under 40 Code of Federal Regulations (CFR) §265.112 and the post-closure plan under 40 CFR §265.118, the owner or operator must address the following objectives and indicate how they will be achieved:

(1) control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(2) control of the release of contaminated run-off from the facility into surface water;

(3) control of the release of airborne particulate contaminants caused by wind erosion; and

(4) compliance with 40 CFR §265.276, concerning the growth of food-chain crops.

(b) The owner or operator must consider at least the following factors addressing the closure and post-closure care objectives of subsection (a) of this section:

(1) type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(2) the mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to groundwater, surface water, and drinking water sources);

(4) climate, including amount, frequency, and pH or precipitation;

(5) geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) unsaturated zone monitoring information obtained under 40 CFR §265.278; and

(7) type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator must consider at least the following methods in addressing the closure and post-closure care objectives of subsection (a) of this section:

(1) removal of contaminated soils;

(2) placement of a final cover, considering:

(A) functions of the cover (e.g., infiltration control, erosion and run-off control, and wind erosion control), and

(B) characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover;

(3) collection and treatment run-off;

(4) diversion structures to prevent surface water run-on from entering the treated area; and

(5) monitoring of soil, soil-pore water, and groundwater.

(d) In addition to the requirements of 40 CFR Part 265; Subpart G, relating to closure and post-closure, §335.118 of this title (relating to Closure Plan; Submission and Approval of Plan) and §335.119 of this title (relating to Post-Closure Plan; Submission and Approval Plan), during the closure period the owner or operator of a land treatment facility must:

(1) continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) maintain the run-on control system required under §335.121(b) of this title (relating to General Operating Requirements (Land Treatment Facilities));

(3) maintain the run-off management system required under §335.121(c) of this title; and

(4) control wind dispersal of particulate matter which may be subject to wind dispersal.

(e) For the purpose of complying with 40 CFR §265.115 concerning certification of closure, when closure is completed, the owner or operator may submit to the executive director certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) In addition to the requirements of 40 CFR §265.117 concerning post-closure care and use of property during the post-closure care period, the owner or operator of a land treatment unit must:

(1) continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

(2) restrict access to the unit as appropriate for its post-closure use;

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(3) assure that growth of food chain crops complies with 40 CFR §265.276 concerning food chain crops; and

(4) control wind dispersal of hazardous waste.

Source: The provisions of this §335.123 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.124. General Operating Requirements (Landfills)

(a) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

(b) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm.

(c) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(d) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

(e) As required by 40 Code of Federal Regulations (CFR) §265.13, the waste analysis plan must include analyses needed to comply with 40 CFR §265.312 (concerning Special Requirements for Ignitable or Reactive Waste) and 40 CFR §265.313 (concerning Special Requirements for Incompatible Wastes). The waste analysis plan must also include analyses needed to comply with §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste). As required by 40 CFR §265.73 (concerning Operating Record), the owner or operator must place the results of these analyses in the operating record of the facility.

Source: The provisions of this §335.124 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective February 26, 1996, 21 TexReg 1142.

§ 335.125. Special Requirements for Bulk and Containerized Waste

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if prior to disposal, the liquid waste or waste containing free liquids is processed or stabilized, chemically or physically (e.g., by mixing with a sorbent solid), so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A container holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) the container is designed to hold liquids or free liquids for use other than storage, such as a capacitor or battery;

(2) the container is very small, such as an ampule; or

(3) the container is disposed of in accordance with 40 Code of Federal Regulations (CFR) §265.316.

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §335.31 of this title (relating to Incorporation of References).

(e) The date for compliance with subsection (a) of this section is November 19, 1981. The date for compliance with subsection (c) of this section is March 22, 1982.

(f) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the executive director, or the executive director determines that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)).

Source: The provisions of this §335.125 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective November 15, 2001, 26 TexReg 9135.

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§ 335.126. Special Requirements for Containers

(a) Containers must be crushed flat, shredded, or similarly reduced in volume to the maximum extent practicable before burial in a landfill.

(b) Owners or operators must be in compliance with this section by November 19, 1981.

Source: The provisions of this §335.126 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106.

§ 335.127. Cost Estimate for Closure

In addition to the requirements of 40 Code of Federal Regulations §265.142 (excluding 40 CFR §265.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see the definition of parent corporation in 40 CFR §265.141(d)). Notwithstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

(1) maximum inventory of wastes in storage and/or processing units, including but not limited to, storage surface impoundments, waste piles, tanks, and containers;

(2) wastes generated as a result of closure activities (e.g. decontamination, removal of liquids from surface impoundments, or waste piles);

(3) contaminated stormwater; or

(4) leachate.

Source: The provision of this §335.127 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.128. Financial Assurance

(a) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility subject to this subchapter, the owner or operator must:

(1) establish financial assurance for the amount of the closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), in addition to the requirements specified in §335.112(a)(7) of this title (relating to Standards).

(2) establish financial assurance for the amount of the post closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title, in addition to the requirements specified in §335.112(a)(7) of this title, if the facility:

(A) includes a disposal facility;

(B) includes a pile, and/or surface impoundment from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §335.112 of this title;

(C) includes a tank system that is required under §335.112 of this title to meet the requirements for landfills;

(D) includes a containment building that is required under §335.112 of this title to meet the requirements for landfills; or

(E) is notified by the executive director of the need for post closure financial assurance for another type of unit.

(b) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility or group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title (relating to Financial Assurance).

(c) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility containing a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit used to manage hazardous waste or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title.

(d) If the executive director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrence resulting from the operations of a hazardous industrial solid waste facility that is not a surface impoundment, landfill, or land treatment facility, the owner or operator may be required to comply with subsection (c) of this section.

Source: The provisions of this §335.128 adopted to be effecti March 21, 2000, 25 TexReg 2394

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SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

§ 335.151. Purpose, Scope, and Applicability

(a) The purpose of this subchapter is to establish minimum standards to define the acceptable management of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste, pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992), and in the evaluation of an investigation report to implement groundwater protection requirements relating to compliance monitoring and corrective action; and in the evaluation of corrective action measures to be instituted pursuant to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). For facilities that store, process, or dispose of industrial solid waste, in addition to hazardous waste, nothing herein shall be construed to restrict or abridge the commission's authority to implement the provisions of the Texas Water Code, Chapter 26, and §335.4 of this title (relating to General Prohibitions), with respect to those activities.

(b) The standards in this subchapter apply to owners and operators of all facilities which process, store, or dispose of hazardous waste, except as specifically provided for in §335.41 of this title (relating to Purpose, Scope, and Applicability).

(c) A facility owner or operator who has fully complied with the requirements for interim status, as defined in the Resource Conservation and Recovery Act, §3005(e), and §335.2 and §335.43 of this title (relating to Permit Required), must comply with the requirements of Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) in lieu of the requirements of this subchapter, until final administrative disposition of his permit application is made, except as provided under Title 40, Code of Federal Regulations, Part 264, Subpart S.

Source: The provisions of §335.151 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective February 22, 1994, 19 TexReg 969.

§ 335.152. Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) Subpart B—General Facility Standards (as amended through December 8, 1997 (62 FR 64636)); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures, except 40 CFR §264.56(d);

~~(4) Subpart E—Manifest System, Recordkeeping~~, and Reporting (as amended through December 8, 1997 (62 FR 64636)), ~~except 40 CFR §§264.71, 264.72, 264.76 and 264.77~~; facilities which are subject to ~~40 CFR~~ Part 264, Subpart X, are subject to ~~40 CFR §264.73(b)(6);~~

(5) Subpart G—Closure and Post-Closure (as amended through August 18, 1992 (57 FR 37194)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

~~(6) Subpart H—Financial Requirements (as~~ amended through June 10, 1994 (59 FR 29958)); except 40 CFR §§264.140, 264.141, ~~264.142~~(a)(2), 264.142(b)~~–(c)~~, 264.143(a)~~–(h)~~, 264.144(b)~~–(c)~~, 264.145(a)~~–(h)~~, 264.146, 264.147(a)~~–(d)~~, 264.147(f)~~–(k)~~, 264.148, 264.149, 264.150, and 264.151; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a), and 37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) Subpart I—Use and Management of Containers (as amended through November 25, 1996 (61 FR 59932));

(8) Subpart J—Tank Systems (as amended through November 25, 1996 (61 FR 59932));

(9) Subpart K—Surface Impoundments (as amended through November 25, 1996 (61 FR 59932)), except 40 CFR §264.221 and §264.228:

(A) reference to 40 CFR §264.221 is changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) reference to 40 CFR §264.228 is changed to §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments));

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(10) Subpart L—Waste Piles (as amended and adopted through January 29, 1992 (57 FR 3462)), except 40 CFR §264.251;

(11) Subpart M—Land Treatment, except 40 CFR §264.273 and §264.280;

(12) Subpart N—Landfills (as amended through November 18, 1992 (57 FR 54452)), except 40 CFR §§264.301, 264.310, 264.314, and 264.315;

(13) Subpart O—Incinerators (as amended through September 30, 1999 (64 FR 52828));

(14) Subpart S—Corrective Action for Solid Waste Management Units (as amended through February 16, 1993 (58 FR 8683)), and 40 CFR §264.554 (as amended through November 30, 1998 (63 FR 65874));

(15) Subpart W—Drip Pads (as amended through December 24, 1992 (57 FR 61492));

(16) Subpart X—Miscellaneous Units (as amended through September 30, 1999 (64 FR 52828));

(17) Subpart AA—Air Emission Standards for Process Vents (as amended through January 21, 1999 (64 FR 3382));

(18) Subpart BB—Air Emission Standards for Equipment Leaks (as amended through December 8, 1997 (62 FR 64636));

(19) Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through January 21, 1999 (64 FR 3382));

(20) Subpart DD—Containment Buildings (as amended through August 18, 1992 (57 FR 37194));

(21) Subpart EE—Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997 (62 FR 6622)); and

(22) the following appendices contained in 40 CFR Part 264:

(A) Appendix I—Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix IV—Cochron's Approximation to the Behrens-Fisher Students' T-Test;

(C) Appendix V—Examples of Potentially Incompatible Waste;

(D) Appendix VI—Political Jurisdictions in Which Compliance With §264.18(a) Must Be Demonstrated; and

(E) Appendix IX—Ground-Water Monitoring List (as amended through June 13, 1997 (62 FR 32451)).

(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201–335.206 of this title (relating to Location Standards for Hazardous Waste Storage, Processing, or Disposal). A copy of 40 CFR §264.18(b) is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(c) The regulations of the EPA that are adopted by reference in this section are adopted subject to the following changes.

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

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

(3) Reference to RCRA, §3008(h) is changed to Texas Water Code, §7.031(c)–(e) (relating to Corrective Action Relating to Hazardous Waste).

(4) Reference to:

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

(B) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(C) 40 CFR §264.280 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

(D) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(E) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(F) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(G) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendment); and

(H) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

~~(5) 40 CFR Parts 260–270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.~~

~~(6) Reference to 40 CFR Part 264, Subpart D changed to §335.152(a)(3) of this title (relating~~

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Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 of this title (relating Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Natural Resource Conservation Commission.

(d) A copy of 40 CFR Part 264 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin.

Source: The provisions of this §335.152 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective October 29, 1990, 15 TexReg 6017; amended to be effective December 13, 1991, 16 TexReg 6936; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 23,1993,18TexReg8218;amended to be effective February 22, 1994, 19 TexReg 969; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective May 20, 1999, 24 TexReg 3726; amended to be effective October 7, 1999, 24 TexReg 8562; amended to be effective March 21, 2000, 25 TexReg 2394; amended to be effective April 12, 2001, 26 TexReg 2741; amended to be effective November 18, 2001, 26 TexReg 9153.

§ 335.153. Reporting of Emergency Situations by Emergency Coordinator

If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment outside the facility, he must report his findings as follows.

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate local officials decide whether local areas should be evacuated.

(2) He must immediately notify the commission according to procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The report must include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and place of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health, or the environment, outside the facility.

Source: The provisions of this §335.153 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.155. Additional Reports

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations (CFR) §264.56(j);

(2) facility closure as specified in 40 CFR §264.115;

(3) as otherwise required by 40 CFR Part 264, Subparts F, K-N, X, AA, and BB.

Source: The provisions of this §335.155 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective May 20, 1999, 24 TexReg 3726; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.156. Applicability of Groundwater Monitoring and Response

(a) Except as provided in subsection (b) of this section, the rules pertaining to groundwater moni-

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toring and response apply to owners and operators of facilities that process, store, or dispose of hazardous waste.

(1) The owner or operator must satisfy those requirements of paragraph (2) of this subsection for all wastes (or constituents thereof) contained in any such waste management unit at the facility, regardless of the time at which waste was placed in the units.

(2) All solid waste management units must comply with the requirements in §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a regulated unit) must comply with the requirements of §§335.157-335.166 of this title (relating to Required Program; Groundwater Protection Standard; Hazardous Constituents; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) in lieu of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) apply to regulated units.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this section and §§335.157-335.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) if:

(1) he is exempted under 40 Code of Federal Regulations §264.1;

(2) he operates a unit which the commission finds;

(A) is an engineered structure;

(B) does not receive or contain liquid waste or waste containing free liquids;

(C) is designed and operated to exclude liquid, precipitation, and other run-on and run-off;

(D) has both inner and outer layer of containment enclosing the waste;

(E) has a leak detection system built into each containment layer for which continuing operation and maintenance will be provided during the active life of the unit and the closure and post-closure care periods; and

(F) to a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(3) the commission finds, pursuant to 40 Code of Federal Regulations §264.280(d), that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above backgrounds levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 40 Code of Federal Regulations §264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator or responsibility to meet the requirements of this subchapter relating to groundwater monitoring and response during the post-closure care period; or

(4) The commission finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under 40 Code of Federal Regulations §264.117. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions on assumptions that maximize the rate of liquid migration;

(5) he designs and operates a pile in compliance with 40 Code of Federal Regulations §264.250(c).

(c) This §§335.157-335.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, these sections:

(1) do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) apply during the post closure care period under 40 Code of Federal Regulations §264.117 if

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the owner or operator is conducting a detection monitoring program under §335.164 of this title (relating to Detection Monitoring Program); or

(3) apply during the compliance period under §335.162 of this title (relating to Compliance Period) if the owner or operator is conducting a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program) or a corrective action program under §335.166 of this title (relating to Corrective Action Program).

Source: The provisions of this §335.156 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective October 19, 1998, 23 TexReg 10878.

§ 335.157. Required Programs

(a) Owners and operators subject to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response); this section, and §§335.158-335.166 of this title (relating to Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) must conduct a monitoring and response program as follows.

(1) Whenever hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) from a regulated unit are detected at the compliance point under §335.161 of this title (relating to Point of Compliance), the owner or operator must institute a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program). "Detection" is defined as statistically significant evidence of contamination as described in §335.164(6) of this title (relating to Detection Monitoring Program).

(2) Whenever the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard) is exceeded, the owner or operator must institute a corrective action program under §335.166 of this title (relating to Corrective Action Program). "Exceeded" is defined as statistically significant evidence of increased contamination as described in §335.165(4) of this title (relating to Compliance Monitoring Program).

(3) Whenever hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) from a regulated unit exceed concentration limits under §335.160 of this title (relating to Concentration Limits) in groundwater between the compliance point under §335.161 of this title (relating to Point of Compliance) and the downgradient facility property boundary, the owner or operator must institute a corrective action program under §335.166 of this title (relating to Corrective Action Program).

(4) In all other cases, the owner or operator must institute a detection monitoring program under §335.164 of this title (relating to Detection Monitoring Program).

(b) The commission will specify in the facility permit or in a compliance plan the specific elements of the monitoring and response program. The commission may include one or more of the programs identified in subsection (a) of this section in the facility permit or in a compliance plan as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. The commission will establish the programs specified in subsection (a)(1)-(3) of this section in a compliance plan. If the owner or operator is not otherwise subject to compliance monitoring, the detection monitoring program will be established in the facility permit. In deciding whether to require the owner or operator to be prepared to institute a particular program, the commission will consider the potential adverse effects on human health and the environment that might occur before final administrative action to incorporate such a program could be taken.

Source: The provisions of this §335.157 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective October 29, 1990, 15 TexReg 6017.

§ 335.158. Groundwater Protection Standard

The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) which have been detected in the groundwater from a regulated unit do not exceed the concentration limits under §335.160 of this title (relating to Concentration Limits) in the uppermost aquifer underlying the waste management area beyond the point of compliance during the compliance period under §335.162 of this title (relating to Compliance Period). The commission will establish this groundwater protection standard in the compliance plan when hazardous constituents have been detected in the groundwater from a regulated unit.

Source: The provisions of this §335.158 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective October 29, 1990, 15 TexReg 6017.

§ 335.159. Hazardous Constituents

(a) The commission will specify in the compliance plan the hazardous constituents to which the ground-

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water protection standard of §335.158 of this title (relating to Groundwater Protection Standard) applies. Hazardous constituents are constituents identified in Appendix VIII of 40 Code of Federal Regulations Part 261 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the commission has excluded them under subsection (b) of this section.

(b) The commission will exclude an Appendix VIII constituent from the list of hazardous constituents specified in the compliance plan if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the commission will consider the following:

(1) potentially adverse effects on groundwater quality, considering:

(A) the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity of groundwater and the direction of groundwater follows;

(D) the proximity and withdrawal rates of groundwater users;

(E) the current and future uses of groundwater in the area;

(F) the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) the potential for health risks caused by human exposure to waste constituents;

(H) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) the persistence and permanence of the potentially adverse effects; and

(2) potentially adverse effects on hydraulically-connected surface water quality, considering:

(A) the volume and physical and chemical characteristics of the waste in the regulated unit;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity and quality of groundwater, and the direction of groundwater flow;

(D) the patterns of rainfall in the region;

(E) the proximity of the regulated unit to surface waters;

(F) the current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(H) the potential for health risks caused by human exposure to waste constituents;

(I) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) the persistence and permanence of the potentially adverse effects.

(c) In making any determination under subsection (b) of this section about the use of groundwater in the area around the facility, the commission will consider any identification of underground sources of drinking water and exempted aquifers made under §331.13 of this title (relating to Exempted Aquifer).

Source: The provisions of this §335.159 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective May 20, 1999, 24 TexReg 3726

§ 335.160. Concentration Limits

(a) The commission will specify in the compliance plan concentration limits in the groundwater for hazardous constituents established under §335.159 of this title (relating to Hazardous Constituents). The concentration of a hazardous constituent:

(1) must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the plan;

(2) for any of the constituents listed in Table 1 of subsection (b)(1) of this section, must not exceed the respective value given in that table if the background level of the constituent is below the value given in Table 1; or

(3) must not exceed an alternate limit established by the commission under subsection (b) of this section.

(b) The commission will establish an alternate concentration limit for a hazardous constituent if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the commission will consider the following:

(1) potentially adverse effects on groundwater quality, considering the maximum concentration of

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constituents for groundwater protection described in the following Table 1 and:

Table 1

Maximum Concentration of Constituents for Groundwater Protection

Constituent	Maximum Concentration1
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1, 2, 3, 4, 10.10-hexachloro-1,7-epoxy-1, 4, 4a, 5, 6, 7, 8, 9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane (1, 2, 3, 4, 5, 6-hexachlorocyclohexane, gamma isomar)	0.004
Methoxychlor (1, 1,1-Trichloro-2, 2-bis (p-methoxy-phenylethane)	0.1
Toxaphene (C(--H(--C1, Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2-4-D 2m 4-Dichlorophenoxyacetic acid)	0.1
2, 4, 5-TP Silvex (2, 4, 5-Trichlorophenoxypropionic acid	0.01

1Milligrams per liter.

(A) the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity of groundwater and the direction of groundwater follow;

(D) the proximity and withdrawal rates of groundwater users;

(E) the current and future uses of groundwater in the area;

(F) the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) the potential for health risks caused by human exposure to waste constituents;

(H) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) the persistence and permanence of the potentially adverse effects; and

(2) potentially adverse effects of hydraulically-connected surface-water quality, considering:

(A) the volume and physical and chemical characteristics of the waste in the regulated unit;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity and quality of groundwater, and the direction of groundwater flow;

(D) the patterns of rainfall in the region;

(E) the proximity of the regulated unit to surface waters;

(F) the current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) the existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;

(H) the potential for health risks caused by human exposure to waste constituents;

(I) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) the persistence and permanence of the potentially adverse effects.

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(c) In making any determination under subsection (b) of this section about the use of groundwater in the area around the facility, the commission will consider any identification of underground sources of drinking water and exempted aquifers made under §331.13 of this title (relating to Exempted Aquifer).

Source: The provisions of this §335.160 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.161. Point of Compliance

(a) The commission will specify in the facility permit the point of compliance at which the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area may be described in the following manner:

(A) by an imaginary line circumscribing the several regulated units;

(B) by an imaginary line circumscribing geographically proximate regulated units;

(C) by an imaginary line circumscribing individually regulated units; or

(D) a combination of subparagraphs (B) and (C) of this paragraph.

Source: The provisions of this §335.161 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.162. Compliance Period

(a) The commission will specify in the compliance plan the compliance period during which the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standards) applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting and the closure period).

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program).

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in subsection (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) has not been exceeded for a period of three consecutive years.

Source: The provisions of this §335.162 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.163. General Groundwater Monitoring Requirements

If a facility contains more than one waste management area, separate groundwater monitoring systems must be installed. The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy §§335.164-335.166 of this title (relating to Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program).

(1) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(A) represent the quality of background water that has not been affected by leakage from a regulated unit:

(i) a determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(ii) sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells;

(B) represent the quality of groundwater passing the point of compliance; and

(C) allow for detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(2) If a waste management area contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit, provided that provisions for sampling the groundwater in the uppermost aquifer will enable

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detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(3) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring-well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

(4) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum, the program must include procedures and techniques for:

(A) sample collection;

(B) sample preservation and shipment;

(C) analytical procedures; and

(D) chain of custody control.

(5) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(6) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

(7) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed and shall follow generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant released to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit. This sampling procedure shall be:

(A) a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(B) an alternate sampling procedure proposed by the owner or operator of the facility and approved by the commission.

(8) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent which, upon approval by the commission, will be specified in the facility's permit on a unit by unit basis. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (PQLs) are used in any of the following statistical procedures to comply with paragraph (9)(E) of this section, the PQL must be proposed by the owner or operator and approved by the executive director. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in paragraph (9) of this section:

(A) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(B) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(C) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(D) a control chart approach that gives control limits for each constituent;

(E) another statistical test method submitted by the owner or operator and approved by the executive director.

(9) Any statistical method chosen under paragraph (8) of this section for specification in the unit permit shall comply with the following performance standards, as appropriate.

(A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the

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distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the commission if it finds it to be protective of human health and the environment.

(D) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the commission if it finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any PQL approved by the executive director under paragraph (8) of this section that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(10) Groundwater monitoring data collected in accordance with paragraph (7) of this section including actual levels of constituents must be maintained in the facility operating record. The commission will specify in the permit when the data must be submitted for review.

Source: The provisions of this §335.163 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective October 29, 1990, 15 TexReg 6017.

§ 335.164. Detection Monitoring Program

An owner or operator required to establish a detection monitoring program must, at a minimum, discharge the following responsibilities:

(1) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The commission will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(A) the types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(B) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(C) the detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(D) the concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this title (relating to Point of Compliance). The groundwater monitoring system must comply with §335.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in its permit pursuant to paragraph (1) of this section in accordance with §335.163(7) of this title. The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under §335.163(8) of this title.

(A) The owner or operator must comply with §335.163(7) of this title in developing the data base

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used to determine background values.

(B) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under §335.163(8) of this title.

(C) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with §335.163(1)(A), (2), and (3) of this title.

(4) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (1) of this section in accordance with §335.163(7) of this title. A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to paragraph (1) of this section at a frequency specified under paragraph (4) of this section.

(A) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title. These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(B) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The commission will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(7) If the owner or operator determines pursuant to paragraph (6) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(B) immediately sample the groundwater in all monitoring wells that exhibit statistically significant evidence of contamination and determine whether constituents in the list of Appendix IX of 40 Code of Federal Regulations Part 264 are present, and if so, in what concentration;

(C) For any Appendix IX compounds found in the analysis pursuant to subparagraph (B) of this paragraph, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to subparagraph (B) of this paragraph, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

(D) within 90 days, submit to the executive director an application for a permit amendment or modification to establish a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program). The application must include the following information:

(i) an identification of the concentration of any Appendix IX constituent detected in the groundwater at each monitoring well that exhibits statistically significant evidence of contamination at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of §335.165 of this title;

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of §335.165 of this title; and

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under §335.160(a)(1) or (2) of this title (relating to Concentration Limits), or a notice of intent to seek an alternate concentration limit under §335.160(b) of this title;

(E) within 180 days, submit to the executive director:

(i) all data necessary to justify an alternate concentration limit sought under §335.160(b) of this title (relating to Concentration Limits);

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(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirements of §335.166 of this title (relating to Corrective Action Program), unless:

(I) all hazardous constituents identified under subparagraph (b) of this paragraph are listed in Table 1 of §335.160 of this title (relating to Concentration Limits) and their concentrations do not exceed the respective values given in that table; or

(II) the owner or operator has sought an alternate concentration limit under §335.160(b) of this title (relating to Concentration Limits) for every hazardous constituent identified under subparagraph (B) of this paragraph.

(F) if the owner or operator determines, pursuant to paragraph (6) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit amendment or modification application under subparagraph (D) of this paragraph; however, the owner or operator is not relieved of the requirement to submit a permit amendment or modification application within the time specified in subparagraph (D) of this paragraph unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) notify the executive director in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the executive director which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the executive director an application for a permit amendment or modification to make any appropriate changes to the detection monitoring program at the facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under this section.

(8) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit amendment or modification to make any appropriate changes to the program.

Source: The provisions of this §335.164 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective October 29, 1990, 15 TexReg 6017; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.165. Compliance Monitoring Program

An owner or operator required to establish a compliance monitoring program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §335.159 of this title (relating to Hazardous Constituents);

(B) concentration limits under §335.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §335.161 of this title (relating to Point of Compliance); and

(D) the compliance period under §335.162 of this title (relating to Compliance Period).

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this title. The groundwater monitoring system must comply with §335. 163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The commission will specify the sampling procedures and statistical methods appropriate for the constituents at the facility, consistent with §335. 163(7) and (8) of this title.

(A) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with §335.163(7) of this title.

(B) The owner or operator must record groundwater analytical data as measured by and in a form necessary for the determination of statistical signifi-

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cance under §335.163(8) of this title for the compliance period of the facility.

(4) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to paragraph (1) of this section, at a frequency specified under paragraph (6) under this section.

(A) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title. The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with §335.163 of this title.

(B) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The commission will specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with §335.163(7) of this title. A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during the compliance period of the facility.

(7) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of 40 Code of Federal Regulations Part 264 reasonably expected to be in or derived from waste managed at the site at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in §335.164(6) of this title (relating to Detection Monitoring Program). If the owner or operator finds Appendix IX constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the executive director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he must report the concentrations of these additional constituents to the executive director within seven days after completion of the initial analysis and add them to the monitoring list.

(8) If the owner or operator determines, pursuant to paragraph (4) of this section, that any concentration limits under §335.160 of this title are being exceeded at any monitoring well at the point of compliance, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded;

(B) submit to the executive director an investigation report to establish a corrective action program meeting the requirements of §335.166 of this title (relating to Corrective Action Program) within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the executive director under §335.164(7)(E) of this title. The report must at a minimum include the following information:

(i) a detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under paragraph (1) of this section; and

(ii) a plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(9) If the owner or operator determines, pursuant to paragraph (4) of this section, that the groundwater concentration limits are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by error in sampling, analysis, or evaluation or natural variation in groundwater. In making a demonstration under this subsection, the owner or operator must:

(A) notify the executive director in writing within seven days that he intends to make a demonstration under this section;

(B) within 90 days submit a report to the executive director which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with

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the standards resulted from error in sampling, analysis, or evaluation;

(C) within 90 days submit to the executive director an application for a compliance plan amendment or compliance modification to make any appropriate change to the compliance monitoring program at the facility; and

(D) continue to monitor in accord with the compliance monitoring program established under this section.

(10) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

(11) The owner or operator shall prepare an annual summary to include the groundwater quality data and groundwater flow rate and direction required under paragraphs (3) and (5) of this section. Such annual summary shall be submitted to the executive director by January 21 of each year on forms provided or approved by the executive director. An owner or operator must keep a copy of the summary for a period of at least three years from the due date of the summary. The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Source: The provisions of this §335.165 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective October 29, 1990, 15 TexReg 6017; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.166. Corrective Action Program

An owner or operator required to establish a corrective action program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §335.159 of this title (relating to Hazardous Constituents);

(B) concentration limits under §335.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §335.161 of this title (relating to Point of Compliance); and

(D) the compliance period under §335.162 of this title (relating to Compliance Period).

(2) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The plan will specify the specific measures that will be taken.

(3) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The commission will specify that time period in the plan. If a compliance plan includes a corrective action program in addition to a compliance monitoring program, the plan will specify when the corrective action will begin and such a requirement will operate in lieu of §335.165(9)(B) of this title (relating to Compliance Monitoring Program).

(4) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program) and must be as effective as that program in determining compliance with the groundwater protection standard under paragraph (5) of this section, where appropriate.

(5) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) that exceed concentration limits under §335.160 of this title (relating to Concentration Limits) in groundwater between the compliance point under §335.161 of this title (relating to Point of Compliance) and the downgradient facility property boundary and beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. The plan will specify the measures to be taken.

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(A) Corrective action measures under this section must be initiated and completed within a reasonable period of time considering the extent of contamination.

(B) Corrective action measures under this section may be terminated once the concentration of hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) is reduced to levels below their respective concentration under §335.160 of this title (relating to Concentration Limits).

(6) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under paragraph (4) of this section, that the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) has not been exceeded for a period of three consecutive years.

(7) The owner or operator must report in writing to the executive director on the effectiveness of the corrective action program. The owner or operator must submit these reports semiannually.

(8) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

Source: The provisions of this §335.166 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218.

§ 335.167. Corrective Action for Solid Waste Management Units

(a) The owner or operator of a facility seeking a permit for the processing, storage, or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

~~(b) Corrective action will be specified in the compliance plan under §305.401 of this title (relating to Groundwater Compliance Plan) and in accordance~~ with this section, 40 Code of Federal Regulations Part 264 Subpart S, and §335.152 of this title (relating to Standards). The plan will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or plan. Financial assurance for such corrective action shall be established and maintained in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities) in an amount acceptable to the executive director.

(c) The owner or operator must implement corrective actions beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Financial assurance for such corrective action shall be established and maintained in accordance with Chapter 37, Subchapter P of this title, in an amount acceptable to the executive director.

Source: The provisions of this §335.167 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969; amended to be effective March 21, 2000, 25 TexReg 2394

§ 335.168. Design and Operating Requirements (Surface Impoundments)

(a) Any surface impoundment that is not covered by subsection (c) of this section or 40 Code of Federal Regulations (CFR) §265.221 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with §335.169(a)(1) of this title (relating to Closure and Post-Closure Care (Surface

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Impoundments)). For impoundments that will be closed in accordance with §335.169(a)(2) of this title, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of subsections (a) and (j) of this section if the commission finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §335.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must meet the requirements of 40 CFR §264.221(c), as amended through January 29, 1992 (57 FR 3487).

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that he meets the requirements of 40 CFR 264.221(d), as amended through January 29, 1992 (57 FR 3462).

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in 40 CFR §261.24, and is in compliance with either of the following requirements:

(1) the monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including, but not limited to, groundwater monitoring and corrective action;

(B) is located more than 1/4 mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)); and

(C) is in compliance with groundwater monitoring requirements of this subchapter; or

(2) the owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) of this section if:

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(1) The existing unit was constructed in compliance with the design standards of Resource Conservation and Recovery Act, §3004(o)(1)(A)(i) and (o)(5); and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind, and wave action; rainfall; run-off, malfunctions of level controllers, alarms, and other equipment; and human error.

(h) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(i) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(j) A surface impoundment (except for an existing portion of a surface impoundment) that will be closed in accordance with §335.169(a)(2) of this title must have an additional liner to that required in subsection (a) of this section which:

(1) prevents any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(2) minimizes the rate of migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment.

Source: The provisions of this §335.168 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.169. Closure and Post-Closure Care (Surface Impoundments)

(a) At closure, the owner or operator must:

(1) remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 Code of Federal Regulations (CFR) §261.3(d) applies; or

(2) eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues; stabilize remaining wastes to a bearing capacity sufficient to support final cover; and cover the surface impoundment with a final cover designed and constructed to:

(A) provide long-term minimization of the migration of liquids through the closed impoundment;

(B) function with minimum maintenance;

(C) promote drainage and minimize erosion or abrasion of the final cover;

(D) accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all post-closure requirements contained in 40 CFR §§264.117–264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 CFR §264.117). The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) maintain and monitor the leak detection system in accordance with 40 CFR §§264.221(c)(2)(iv) and (3) and 264.226(d), and comply with all other applicable leak detection system requirements of this subchapter;

(3) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§335.156–335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); and

(4) prevent run-on and run-off from eroding or otherwise damaging the final cover.

(c) If an owner or operator plans to close a surface impoundment in accordance with subsection (a)(1) of this section, and the impoundment does not comply with the liner requirements of §335.168(a) of this title (relating to Design and

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Operating Requirements (Surface Impoundments)) and is not exempt from them in accordance with §335.168(b) of this title, then:

(1) the closure plan for the impoundment under 40 CFR §264.112 must include both a plan for complying with subsection (a)(1) of this section and a contingent plan for complying with subsection (a)(2) of this section, in case not all contaminated subsoils can be practicably removed at closure; and the owner or operator must prepare a contingent post-closure plan under 40 CFR §264.118 for complying with subsection (b) of this section, in case not all contaminated subsoils can be practicably removed at closure;

(2) the cost estimates calculated under 40 CFR §264.142 and §264.144 for closure and post-closure care of an impoundment subject to this subsection must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under subsection (a)(1) of this section.

Source: The provisions of this §335.169 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.170. Design and Operating Requirements (Waste Piles)

(a) A waste pile (except for an existing portion of a waste pile) must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The commission will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (one foot). The leachate collection and removal system must be:

(A) constructed of materials that are:

(i) chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(B) designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the commission finds, based on a demonstration by the owner or operator, the alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner and operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992, must comply with the requirements of 40 CFR §264.251(c), as amended through January 29, 1992, at 57 FedReg 3488.

(d) The executive director may approve alternative design or operating practices to those specified

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in subsection (c) of this section if the owner or operator demonstrates to the executive director that such design and operating practices, together with location characteristics:

(1) will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) Subsection (c) of this section does not apply to monofills that are granted a waiver by the Commission in accordance with §335.168(e) of this title (relating to Design and Operating Requirements (Surface Impoundments)).

(f) The owner or operator of any replacement waste pile unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm.

(h) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(i) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(k) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Source: The provisions of this §335.170 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective February 26, 1996, 21 TexReg 1142.

§ 335.171. Design and Operating Requirements (Land Treatment Units)

The commission will specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

(1) The owner or operator must design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator must design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under 40 Code of Federal Regulations §264.272. At a minimum, the commission will specify the following in the facility permit:

(A) the rate and method of waste application to the treatment zone;

(B) measures to control soil pH;

(C) measures to enhance microbial or chemical reactions (e.g., fertilization, tilling); and

(D) measures to control the moisture content of the treatment zone.

(2) The owner or operator must design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(3) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 100-year storm.

(4) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(5) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(6) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

(7) The owner or operator must inspect the unit weekly and after storms to detect evidence of:

(A) deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(B) improper functioning of wind dispersal control measures.

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Source: The provisions of this §335.171 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.172. Closure and Post-Closure Care (Land Treatment Units)

(a) During the closure period, the owner or operator must:

(1) continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under §335.171(1) of this title (relating to Design and Operating Requirements (Land Treatment Units)), except to the extent such measures are inconsistent with paragraph (8) of this subsection;

(2) continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under §335.171(3) of this title;

(3) maintain the run-on control system required under §335.171(3) of this title;

(4) maintain the run-off management system required under §335.171(4) of this title;

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title;

(6) continue to comply with any prohibitions or conditions concerning growth of food-chain crops under 40 Code of Federal Regulations (CFR) §264.276;

(7) continue unsaturated zone monitoring in compliance with 40 CFR §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with 40 CFR §264.115, when closure is completed, the owner or operator may submit to the executive director certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period, the owner or operator must:

(1) continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other post-closure care activities;

(2) maintain a vegetative cover over closed portions of the facility;

(3) maintain the run-on control system required under §335.171(3) of this title;

(4) maintain the run-off management system required under §335.171(4) of this title;

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title;

(6) continue to comply with any prohibition or conditions concerning growth of food-chain crops under 40 CFR §264.276; and

(7) continue unsaturated zone monitoring in compliance with 40 CFR §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under subsections (a)(8) and (c) of this section if the commission finds that the level of hazardous constituents in the treatment zone does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (3) of this subsection. The owner or operator may submit such a demonstration to the executive director at any time during the closure or post-closure care periods.

(1) The owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under 40 CFR §264.271(b).

(A) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(B) The owner or operator must express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under paragraph (3) of this subsection.

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator must take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by solid waste or leakage from the treatment zone, and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator

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must compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator must use a statistical procedure that:

(A) is appropriate for the distribution of the data used to establish background values; and

(B) provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under §§335.156–335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); if the commission finds that the owner or operator satisfied subsection (d) of this section and if unsaturated zone monitoring under 40 CFR §264.278 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

Source: The provisions of this §335.172 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.173. Design and Operating Requirements (Landfills)

(a) Any landfill that is not covered by subsection (c) of this section or 40 Code of Federal Regulations §265.301(a) must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a liner that:

(A) prevents any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(B) minimizes the rate of migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment; and

(3) a leachate collection and removal system immediately above the top liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The commission will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (one foot). The leachate collection and removal system must be:

(A) constructed of materials that are:

(i) chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(B) designed and operated to function without clogging through the scheduled closure of the landfill.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the commission finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §335.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

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(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992, must comply with 40 CFR 264.301(c) as amended through January 29, 1992, at 57 FedReg 3489.

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that such design and operating practices, together with location characteristics:

(1) will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in 40 Code of Federal Regulations §261.24, and is in compliance with either paragraph (1) or (2) of this subsection.

(1) The monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking;

(B) is located more than 1/4 mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)); and

(C) is in compliance with groundwater monitoring requirements of this subchapter.

(2) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement landfill unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

(h) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(i) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(k) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Source: The provisions of this §335.173 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142.

§ 335.174. Closure and Post-Closure Care (Landfills)

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(1) provide long-term minimization of migration of liquids through the closed landfill;

(2) function with minimum maintenance;

(3) promote drainage and minimize erosion or abrasion of the cover;

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(4) accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in 40 Code of Federal Regulations §§264.117-264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 Code of Federal Regulations §264.117). The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) maintain and monitor the leak detection system in accordance with 40 CFR §264.301(c)(3)(iv) and (4) and §264.303(c), and comply with all other applicable leak detection system requirements of this subchapter.

(4) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§335.156-335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program);

(5) prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6) protect and maintain surveyed benchmarks used in complying with 40 Code of Federal Regulations §264.309.

Source: The provisions of this §335.174 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective February 26, 1996, 21 TexReg 1142.

§ 335.175. Special Requirements for Bulk and Containerized Waste

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically (e.g., by mixing with a sorbent solid), so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) To demonstrate the absence or presence of free liquids in either a containerized or bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 Code of Federal Regulations (CFR) §260.11 and in §335.30 of this title (relating to Incorporation of References).

(d) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited, unless the owner or operator of such landfill demonstrates to the commission, or the commission determines, that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains or may reasonably be anticipated to contain hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)).

(e) Containers holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) the container is very small, such as an ampule; or

(2) the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(3) the container is a lab pack as defined in 40 CFR §264.316 and is disposed of in accordance with 40 CFR §264.316.

Source: The provisions of this §335.175 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983.

§ 335.176. Special Requirements for Containers

Unless they are very small, such as an ampule, containers must be crushed, shredded, or similarly reduced in volume to the maximum extent practical before burial in a landfill.

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Source: The provisions of this §335.176 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.177. General Performance Standard

No person may cause, suffer, allow, or permit the storage, processing, or disposal of hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of hazardous waste, hazardous or nonhazardous constituents, or any other materials resulting from industrial solid waste activities, including, but not limited to, reaction products, into or adjacent to the waters in the state without specific authorization for such discharge from the Texas Natural Resource Conservation Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health or welfare.

Source: The provisions of this §335.177 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.178. Cost Estimate for Closure

In addition to the requirements of 40 Code of Federal Regulations (CFR) §264.142 (excluding 40 CFR §264.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither the parent nor a subsidiary of the owner or operator (see definition of parent corporation in 40 CFR §264.141(d)). Notwithstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment, off-site, and processing or disposal off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

(1) maximum inventory of wastes in storage and/or processing units, including, but not limited to, storage surface impoundments, waste piles, tanks, and containers;

(2) wastes generated as a result of closure activities (e.g. decontamination, removal of liquids from surface impoundments, or waste piles);

(3) contaminated stormwater; and

(4) leachate.

Source: The provisions of this §335.178 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.179. Financial Assurance

(a) Before a permit may be issued, amended, extended, or renewed for a solid waste facility for storage, processing, or disposal of hazardous waste, the commission shall determine the type or types of financial assurance which may be used by the applicant to comply with applicable regulations.

(b) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility subject to this subchapter, the permittee must:

(1) establish financial assurance for the amount of the closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), in addition to the requirements specified in §335.152(a)(6) of this title (relating to Standards); and

(2) establish financial assurance for the amount of the post closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title, in addition to the requirements specified in §335.152(a)(6) of this title, if the facility:

(A) includes a disposal facility;

(B) includes a pile, and/or surface impoundment from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments)) and 40 Code of Federal Regulations, §264.258;

(C) includes a tank system that is required under §335.152 of this title, to meet the requirements for landfills;

(D) includes a containment building that is required under §335.152 of this title, to meet the requirements for landfills; or

(E) is notified by the executive director of the need for post closure financial assurance for another type of unit.

(c) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title (relating to Financial Assurance).

(d) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility containing a hazardous waste surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit used to manage hazardous waste or a

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ways and Public Transportation; and

(5) Texas Flexible Pavement Design System.

Source: The provisions of this §335.182 adopted to be effective November 7, 1991, 16 TexReg 6065.

§ 335.183. Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities

(a) In evaluating an application for a new commercial hazardous waste management facility permit, the commission shall verify that:

(1) sufficient emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located; or

(2) the applicant has secured sufficient financial assurance in accordance with §305.50(12)(C)(ii) or (D) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit) to fund the emergency response personnel and equipment determined to be necessary by the commission, to manage a reasonable worst-case emergency condition associated with the operation of the facility.

(b) If the applicant for a new commercial hazardous waste management facility intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located, the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. An appropriate entity would be defined as a professional organization, existing at the time of application, regularly doing business in the area of emergency and/or disaster response.

(c) If financial assurance is required pursuant to this section, it shall meet the following requirements.

(1) The financial assurance must benefit the county government or municipal government in the county in which the facility is located or proposed to be located, or both.

(2) The financial assurance must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment.

(3) The financial assurance must meet the requirements of §305.50(12)(C)(ii) or (D) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

(d) In evaluating the sufficiency of emergency response capabilities, the commission shall consider the following:

(1) geology of the area;

(2) drainage patterns;

(3) seasonally prevailing winds and weather patterns;

(4) availability of all local emergency response resources, including fire, police, hospital, etc. service;

(5) proximity of human exposure and/or sensitive environmental receptors;

(6) length of time for first response;

(7) trained response teams on-site (OSHA specialist level), with a 24-hour response team;

(8) the amount of equipment and trained personnel available on a first-response basis, including the minimum amount of equipment on hand or available near the facility with hazardous materials capabilities;

(9) the ability to deal with various types of injuries;

(10) the ability to respond effectively to environmental contamination; and

(11) the efficiency and safety of any evacuation plan submitted by the applicant.

Source: The provisions of this §335.183 adopted to be effective November 7, 1991, 16 TexReg 6065.

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

§ 335.201. Purpose, Scope, and Applicability

(a) This subchapter establishes minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste. Except as otherwise provided in this section, this subchapter applies to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities, filed on or after September 1, 1984. These sections do not apply to the following:

(1) permit applications submitted pursuant to §335.2(c) of this title (relating to Permit Required), §335.43(b) of this title (relating to Permit Required), and §335.45(b) of this title (relating to Effect on Existing Facilities), including any revision submitted pursuant to §305.51 of this title (relating to Revision

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of Applications for Hazardous Waste Permits);

(2) permit applications filed pursuant to §335.2(a) of this title which have been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which have been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984; and

~~(3) on-site remedial actions conducted pursuant~~ to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 United States Code §§9601 et seq., as amended by the Superfund Amendments Reauthorization Act of 1986 or Texas Health and Safety Code, Chapter 361, ~~Subchapter F.~~

~~(b) The standards contained in §335.204(a)(6)–(9), (b)(7)–(12), (c)(6)–(11), (d)(6)–(11), and (e)(8)–(13) are not applicable to facilities that have submitted a notice of intent to file a permit application pursuant to §335.391 of this title (relating to Pre-Application Review) prior to May 3, 1988, or to facilities that have filed permit applications pursuant to §335.2(a) of this title which were submitted in accordance with Chapter 305 of this title and that were declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to May 3, 1988.~~

(c) The purpose of this subchapter is to condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a site that reasonably minimizes possible contamination of surface water and groundwater; to define the characteristics that make an area unsuitable for a hazardous waste management facility; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction and operational features of the facility will prevent adverse effects from unsuitable site characteristics. Nothing herein is intended to restrict or abrogate the commission's general authority under Texas Health and Safety Code, Chapter 361 to review site suitability for all facilities which manage municipal hazardous waste or industrial solid waste.

Source: The provisions of this §335.201 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective May 3, 1988, 13 TexReg 1913; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.202. Definitions

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

~~(1) Active geologic processes—Any natural process which alters the surface and/or subsurface of the earth, including, but not limited to, erosion (including shoreline erosion along the coast), submergence, subsidence, faulting, karst formation, flooding in alluvial flood wash zones, meandering river bank cutting, and earthquakes.~~

(2) Aquifer—A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

~~(3) Area subject to active shoreline erosion—A coastal area where shoreline erosion has been documented within historic time.~~

(4) Areal expansion of an existing facility—The enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility.

~~(5) Areas of direct drainage—Those land areas~~ from which surface water runoff could flow into a lake used to supply public drinking water.

(6) Commercial hazardous waste management facility—Any hazardous waste management facility that accepts hazardous waste or PCBs 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, where "captured facility" means 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.

(7) Critical habitat of an endangered species—An area that is determined by the United States Fish and Wildlife Service to be a critical habitat for an endangered species.

(8) Erosion—The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrasion, wearing away, and transportation, by which earthen or rock material is ~~removed from any part of the earth's surface.~~

(9) Existing hazardous waste management facility—Any facility used for the storage, processing, or disposal of hazardous waste and which is authorized by a hazardous waste permit. Facilities identified in the following pending applications will also be considered existing hazardous waste man-

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agement facilities pending final action on the application by the commission:

(A) an application submitted pursuant to §335.2(c) of this title (relating to Permit Required), §335.43(b) of this title (relating to Permit Required), and §335.45(b) of this title (relating to Effect on Existing Facilities), including any revisions made in accordance with §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits); or

(B) an application filed pursuant to §335.2(a) of this title which has been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which has been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984.

(10) New hazardous waste management facility—Any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility.

(11) One hundred-year floodplain—Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

~~(12) Public water system—A system for the provision~~ to the public of piped water for human consumption, if such system has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days out of the year.

(13) Regional aquifer—An aquifer which has been identified by the Texas Natural Resource Conservation Commission as a major or minor aquifer. Major aquifers yield large quantities of water in large areas of the state. Minor aquifers yield large quantities of water in small areas of the state or small quantities of water in large areas of the state. (These aquifers are identified in Appendix B of the Texas Department of Water Resources Report Number 238).

~~(14) Residence—The structure and surrounding property within the property boundaries not to exceed 100 feet from the structure in all directions.~~

(15) Secondary containment—A system designed and constructed to collect rainfall runoff, to prevent rainfall run-on from outside the structure, and to contain waste spills, leaks, or discharges within the structure until such waste can be removed.

(16) Sole-source aquifer—An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. The Edwards Aquifer has been designated a sole-source aquifer by the EPA. The Edwards Aquifer recharge zone is specifically that area delineated on maps in the offices of the executive director.

(17) Storage surface impoundment—A surface impoundment from which all wastes and waste- contaminated soils are removed at the time of closure of the impoundment.

(18) Wetlands—Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Source: The provisions of this §335.202 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective May 3, 1988, 13 TexReg 1913; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective March 20, 1992, 17 TexReg 1737; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.203. Site Selection To Protect Groundwater or Surface Water

The commission may not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of surface water and groundwater. In making this determination, the commission shall consider the following factors:

(1) active geologic processes such as flooding, erosion, subsidence, submergence, and faulting;

(2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge or discharge conditions;

(3) soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and points of discharge to surface water; and

(4) climatological conditions.

Source: The provisions of this §335.203 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.204. Unsuitable Site Characteristics

(a) Storage or processing facilities (excluding storage surface impoundments).

(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 physical transport of any hazardous waste by a

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100-year flood event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

(2) A storage or processing facility (excluding storage surface impoundments) may not be located in wetlands.

(3) A storage or processing facility (excluding storage surface impoundments) may not be located on the recharge zone of a sole-source aquifer unless secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges.

(4) A storage or processing facility (excluding storage surface impoundments) may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the facility by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} centimeters per second (cm/sec), or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges.

(5) A storage or processing facility (excluding storage surface impoundments) may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) secondary containment is provided to preclude migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

~~(6) A storage or processing facility (excluding storage surface impoundments) may not be located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.~~

(7) A storage or processing facility (excluding storage surface impoundments) may not be located in areas of active geologic processes unless the ~~design, construction, and operational features of the facility will prevent adverse effects resulting from~~ the geologic processes.

(8) A storage or processing facility may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(9) A storage or processing facility may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, ~~and a visual observation of the proposed site.~~

(b) Land treatment facilities.

(1) A land treatment facility may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. A new commercial hazardous waste management facility land treatment unit may not be located in a 100-year floodplain, unless the applicant demonstrates to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(2) A land treatment facility may not be located in wetlands.

(3) A land treatment facility may not be located in the recharge zone of a sole-source aquifer.

(4) A land treatment facility may not be located in areas overlying regional aquifers unless:

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(A) it is an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate of the facility by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the treatment zone; or

(B) the regional aquifer is separated from the base of the treatment zone by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec, or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A land treatment facility may not be located in areas where soil unit(s) within five feet of the treatment zone have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec, unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A land treatment facility may not be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, 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. The measurement of distances required for a new hazardous waste land treatment facility shall be taken from a perimeter around the proposed new hazardous waste land treatment management unit. The perimeter shall be not more than 75 feet from the edge of the proposed new hazardous waste land treatment unit.

~~(7) A land treatment facility may not be located in~~ areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(8) A land treatment facility may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

~~(9) A land treatment facility may not be located~~ within 1,000 feet of an area subject to active coastal shoreline erosion if the area is protected by a barrier island or peninsula unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(10) A land treatment facility may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(11) A land treatment facility may not be located on a barrier island or peninsula.

(12) A land treatment facility may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a ~~visual observation of the proposed site.~~

(c) Waste piles.

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

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event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

(2) A waste pile may not be located in wetlands.

(3) A waste pile may not be located on the recharge zone of a sole-source aquifer.

(4) A waste pile may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) secondary containment is provided to preclude pollutant migration to groundwater from spills, leaks, or discharges.

(5) A waste pile may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) secondary containment is provided to preclude pollutant migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

~~(6) A waste pile may not be located in areas of~~ direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(7) A waste pile may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(8) A waste pile may not be located within 1,000 feet of an area subject to active coastal shoreline erosion if the area is protected by a barrier island or peninsula unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are ~~unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility~~ must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(9) A waste pile may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(10) A waste pile may not be located on a barrier island or peninsula.

(11) A waste pile may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a ~~visual observation of the proposed site.~~

(d) Storage surface impoundments.

(1) A storage surface impoundment may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

(2) A storage surface impoundment may not be located in wetlands.

(3) A storage surface impoundment may not be located on the recharge zone of a sole-source aquifer.

(4) A storage surface impoundment may not be located in areas overlying regional aquifers unless:

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(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment.

(5) A storage surface impoundment may not be located in areas where the soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

~~(6) A storage surface impoundment may not be~~ located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(7) A storage surface impoundment may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(8) A storage surface impoundment may not be located within 1,000 feet of an area of active coastal shoreline erosion if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

~~(9) A storage surface impoundment may not be located in the critical habitat of an endangered species of plant and animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.~~

(10) A storage surface impoundment may not be located on a barrier island or peninsula.

(11) A storage surface impoundment may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, ~~and a visual observation of the proposed site.~~

(e) Landfills. Any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(1) ~~Except as provided in subparagraphs (A) and (B) of this paragraph,~~ a landfill may not be located in the 100-year floodplain existing prior to site development except in areas with flood depths less than three feet. Any landfill within the 100-year floodplain must be designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood ~~event.~~

~~(A) The areal expansion of a landfill in a 100-year~~ floodplain may be allowed by the commission if the applicant demonstrates to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(B) A new commercial hazardous waste management facility landfill unit may not be located in a ~~100-year floodplain, unless the applicant demon-~~

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~~strates to the satisfaction of the commission that the~~ facility design will ~~prevent~~ the physical transport of ~~any hazardous waste by a 100-year flood event.~~

(2) A landfill may not be located in wetlands.

(3) A landfill may not be located on the recharge zone of a sole-source aquifer.

(4) A landfill may not be located in areas overlying regional aquifers unless:

(A) it is in an area where the average annual evaporation exceeds the average annual rainfall by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the containment structure; or

(B) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A landfill may not be located in areas where the soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) it is an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A landfill may not be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, 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. The measurement of distances required for a new hazardous waste landfill shall be taken from a perimeter around the proposed new hazardous waste landfill. The perimeter shall be not more than 75 feet from the edge of the proposed new hazardous waste landfill unit.

(7) A landfill at which hazardous waste is received for a fee may not be located in the 100-year floodplain of a perennial stream, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, VO, or V1-30. 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.

~~(8) A landfill may not be located in areas of direct~~ drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(9) A landfill may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(10) A landfill may not be located within 1,000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(11) A landfill may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(12) A landfill may not be located on a barrier island or peninsula.

(13) A landfill may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). ~~The fault study should include analyses of any elec-~~

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tric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(14) For purposes of this subchapter, any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(f) Injection wells. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited.

Source: The provisions of this §335.204 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective May 3, 1988, 13 TexReg 1913; amended to be effective November 7, 1991, 16 TexReg 6065.

§ 335.205. Prohibition of Permit Issuance

(a) The commission shall not issue a permit for any of the following:

(1) a new hazardous waste management facility or an areal expansion of an existing facility if the facility or expansion does not meet the requirements of §335.204 of this title (relating to Unsuitable Site Characteristics);

(2) a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed of at the landfill;

(3) a new commercial hazardous waste management facility as defined in §335.202 of this title (relating to Definitions) including such facilities that burn or propose to burn waste-derived fuel, as defined in this section, or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within 1/2 of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park;

(4) a new commercial hazardous waste management facility that is proposed to be located at a distance greater than 1/2 mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park unless the applicant demonstrates to the satisfaction of the commission that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries; or

(5) a Class I injection well, a proposed hazardous waste management facility other than a Class I injection well, or a capacity expansion of an existing hazardous waste management facility if a fault exists within 2-1/2 miles from the proposed or existing wellbore of the Class I injection well or the area within the cone of influence whichever is greater, or if a fault exists within 3,000 feet of the proposed hazardous waste management facility other than a Class I injection well or of the capacity expansion of an existing hazardous waste management facility unless the applicant demonstrates to the satisfaction of the commission unless previously demonstrated to the commission or to the EPA that:

(A) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(B) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(i) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous waste will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(b) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subsection (a)(3) of this section, distances shall be measured from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(c) The measurement of distances required in subsection (a)(1), (3), and (4), and subsection (b) of this section shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed,

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when the permit application is filed with the commission. The restrictions imposed by subsection (a)(1), (3), and (4), and subsection (b) of this section do not apply to an established residence, church, school, day care center, surface water body used for a public drinking supply, or dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(d) The measurement of distances required in subsection (a)(1), (3), and (4), and subsection (b) of this section shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

(e) Nothing in this subchapter shall be construed to require the commission to issue a permit notwithstanding a finding that the proposed facility would satisfy the requirements of §335.203 of this title (relating to Site Selection to Protect Groundwater or Surface Water) and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to §335.204 of this title.

(f) The term "Waste-derived fuel" when used in this section, shall mean any material resulting from the blending or inclusion of hazardous waste that is to be burned for energy recovery. Such fuel does not include material derived from nonhazardous waste such as nonhazardous waste garbage, rubbish, refuse, tires, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, or other nonhazardous waste solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, or agricultural operations or from community or institutional activities.

Source: The provisions of this §335.205 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 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 §275.78 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.

Source: The provisions of this §335.206 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective April 23, 1991, 16 TexReg 2053; amended to be effective November 15, 2001, 26 TexReg 9135.

SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTE AND SPECIFIC TYPES OF FACILITIES

DIVISION 1. RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

§ 335.211. Applicability

(a) The regulations of §§335.211-335.214 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal) apply to recyclable materials that are applied to or placed on the land:

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

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

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

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

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section and remain subject to regulation.

Source: The provisions of this §335.211 adopted to be effective May 28, 1986, 11 TexReg 2348; amended to be effective August 30, 1988, 13 TexReg 4072; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective October 19, 1998, 23 TexReg 10878.

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

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

Source: The provisions of this §335.212 adopted to be effective May 28, 1986, 11 TexReg 2348.

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

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

Source: The provisions of this §335.213 adopted to be effective May 28, 1986, 11 TexReg 2348; amended to be effective October 19, 1998, 23 TexReg 10878.

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

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter O of this chapter (relating to Land Disposal Restrictions), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits), and the notification requirement under §335.6 of this title

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(relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §335.211(b) of this title (relating to Applicability).

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

Source: The provisions of this §335.214 adopted to be effective May 28, 1986, 11 TexReg 2348; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective October 19, 1998, 23 TexReg 10878.

DIVISION 2. HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§ 335.221. Applicability and Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the CFR through November 19, 1999 (64 FR 63209), except as noted in this section:

(1) §266.100—Applicability, except §266.100(c);

(A) reference to "§266.212" is changed to "§266.112"; and

~~(B) reference to "the applicable requirements of~~ subparts A through H, BB and CC of parts 264 and 265 of this chapter" is changed to "~~the~~ applicable requirements of §§335.111 of this title (relating to Purpose, Scope and Applicability), 335.112(a)(1)–(7), (20), and (21) of this title (relating to Standards), 335.151 of this title (relating to Purpose, Scope and Applicability), and 335.152(a)(1)–(6), (18), and (19) ~~of this title (relating to Standards)";~~

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

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

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

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

(6) §266.102(e)—Permit Standards for Burners—Operating Requirements;

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

(8) §266.103(a)(4)—Interim Status Standards for Burners—Purpose, Scope, and Applicability—Applicability of Part 265 Standards, excepting those portions of §266.103(a)(4) containing references to §§265.56(d), 265.71–265.72, 265.75–265.77, 265.142(a)(2); facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2) and §264.151(h)(2), as amended;

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

(10) §266.103(b)—Interim Status Standards for Burners—Certification of Precompliance, except §§266.103(b)(1) and (6);

(11) §266.103(c)—Interim Status Standards for Burners—Certification of Compliance, except §266.103(c)(3)(i);

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

(13) §266.103(g)(1)–(2)—Interim Status Standards for Burners—Automatic Waste Feed Cutoff;

(14) §266.103(h)–(l)—Interim Status Standards for Burners: Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure, respectively.

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

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

(17) §266.106—Standards to Control Metals Emissions, except §266.106(i);

(18) §266.107—Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl_2) Emissions, except §266.107(h);

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

(20) §266.109—Low-Risk Waste Exemption;

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

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

(23) §266.112—Regulation of Residues.

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

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

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4, and §335.24(c)(3)–(4) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

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

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

Source: The provisions of this §335.221 adopted to be effective September 1, 1986, 11 TexReg 3697; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400; amended to be effective November 20, 1996, 21 TexReg 10983; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 4, 1999, 24 TexReg 2352; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.222. Management Prior to Burning

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

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

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

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

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

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

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

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

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

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions of 40 Code of Federal Regulations §266. 108, only hazardous waste that they generate are exempt from regulation under the provisions listed above in paragraph (1) of this subsection applicable to storage units for those units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

Source: The provisions of this §335.222 adopted to be effective July 29, 1992, 17 TexReg 5017; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.223. Additional Permit Standards for Burners

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

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

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

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

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

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

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

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

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

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

Source: The provisions of this §335.223 adopted to be effective July 29, 1992, 17 TexReg 5017.

§ 335.224. Additional Interim Status Standards for Burners

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

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

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

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

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

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

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

(D) §335.114 of this title (relating to Reporting Requirements);

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

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

(4) The owner or operator must provide complete and accurate information specified in 40 CFR §266.103(b)(2) to the executive director on or before August 21, 1992, and must establish limits for the operating parameters specified in 40 CFR §266.103(b)(3). Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in 40 CFR §266.103(b)(3), the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, HCl and Cl_2 are not likely to exceed the limits provided under 40 CFR §§266.105, 266.106, and 266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under 40 CFR §266.103(b)(3) until the owner or operator submits a revised certification of precompliance under 40 CFR §266.103(b)(8) or a certifica-

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tion of compliance under 40 CFR §266.103(c), or until a permit is issued.

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §305.103(b)(2)–(12) of this title (relating to Notice by Mail). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 CFR §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 Code of Federal Regulations §266.103(b) and 30 TAC §335.224(4) and (5)." An owner or operator who satisfied the public notice requirements under 40 CFR §266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

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

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

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7)–(14) of this title, and 40 CFR §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl_2;

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

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

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

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

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

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

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

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

(J) location (mailing address) of the local Texas Natural Resource Conservation Commission (TNRCC) regional office, where further information can be obtained on TNRCC regulation of hazardous waste burning.

(6) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 CFR §§266.103(a)(5)(i)(D), 266.104(b)–(e), and 266.105–266.107, under the procedures prescribed by this paragraph and paragraphs (7) and (8) of this section and 40 CFR §266.103(c), except under extensions of time provided by 40 CFR §266.103(c)(7). Based on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR §266.103(c)(1). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the certification of compliance or require additional information to be submitted within specified time frames.

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 CFR §266.103(b) and paragraphs (4)–(5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR §266.103(c)(2). The owner and operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a

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similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of §266.103(c).

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

(9) The owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266. 103(c), within 150 days of rejection by the executive director under this paragraph and paragraphs (6) and (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames. Except for the activities necessary for the owner or operator to conduct the compliance testing in accordance with 40 CFR §266.103(c)(8)(i)–(iv), and except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon rejection by the executive director and until a subsequent recertification of compliance is approved under paragraph (8) of this section, the owner or operator shall not burn hazardous waste in the unit for which a certification of compliance or recertification of compliance was rejected.

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

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

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

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

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

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

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

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

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

(13) The owner or operator may appeal to the commission any rejection of a certification or recer-

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tification by the executive director. Owners and operators who appeal to the commission any rejection of a certification or recertification by the executive director may continue operations under the rejected certification or recertification until the rejection is upheld by the commission.

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

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

Source: The provisions of this §335.224 adopted to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.225. Additional Standards for Direct Transfer

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

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

Source: The provisions of this §335.225 adopted to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 15, 2001, 26 TexReg 9135.

DIVISION 3. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

§ 335.241. Applicability and Requirements

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

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

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

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

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

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

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

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

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

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

~~(d) Recyclable materials that are regulated under~~ this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated Permits).

Source: The provisions of this §335.241 adopted to be effective May 28, 1986, 11 TexReg 2349; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective November 15, 2001, 26 TexReg 9135.

DIVISION 4. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

§ 335.251. Applicability and Requirements

(a) The regulations of this section apply to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, who store spent batteries that are to be regenerated, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) applies; and are not subject to regulation under Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); or Chapter 305 of this title (relating to Consolidated Permits). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

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

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards of Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and 40 Code of Federal Regulations §265.13; and

(2) all applicable provisions in Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title

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(relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated Permits).

Source: The provisions of this §335.251 adopted to be effective May 28, 1986, 11 TexReg 2349; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective October 19, 1998, 23 TexReg 10878.

DIVISION 5. UNIVERSAL WASTE RULE

§ 335.261. Universal Waste Rule

(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under Title 30 Texas Administrative Code. Except as provided in subsection (b) of this section, Title 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended and adopted through July 6, 1999 at 64 FedReg 36466.

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

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

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

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

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

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

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

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

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

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

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

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

(12) In 40 CFR §273.4(a), the reference to "§273.9" is changed to "§335.261(b)(16)(E) of this title (relating to Universal Waste Rule)" and in 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

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

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

(15) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.5" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

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

(A) "Destination Facility" means a facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste;

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

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

(D) "Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively;

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

(F) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of this section:

(i) batteries as described in 40 CFR §273.2;

(ii) pesticides as described in 40 CFR §273.3;

(iii) thermostats as described in 40 CFR §273.4;

(iv) paint and paint-related waste as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(v) lamps as described in 40 CFR §273.5.

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

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

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

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

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

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

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

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

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

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

(27) 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(3) Documentation of the demonstrations under paragraphs (1) and (2) of this subsection is provided~~

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in a written report to the executive director; and

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

Source: The provisions of this §335.261 adopted to be effective July 16, 1997, 22 TexReg 6457; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective October 24, 1999, 24 TexReg 9293; amended to be effective April 30, 2000, 25 TexReg 3547

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: The provisions of this §335.262 adopted to be effective October 24, 1999, 24 TexReg 9293; amended to be effective November 15, 2001, 26 TexReg 9135.

DIVISION 6. MILITARY MUNITIONS

§ 335.271. Purpose, Scope, and Applicability

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

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

Source: The provisions of this §335.271 adopted to be effective effective April 12, 2001, 26 TexReg 2741.

§ 335.272. Standards

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

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(b) Reference to:

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

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

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

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

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

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

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

(8) 40 CFR §§264.1(g)(8), 265.1(c)(11), and 270. 1(c)(3) are changed to §335.41(d)(2) of this title (relating to Hazardous Waste Management General Provisions);

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

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

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

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

(13) RCRA §7003 is changed to THSC, §361.272 (relating to Administrative Orders Concerning Imminent and Substantial Endangerment), THSC, §361. 273 (relating to Injunction as Alternative to Administrative Order), THSC, §361.301 (relating to Emergency Order), TWC, §26.121, (relating to Unauthorized Discharges Prohibited.)

Source: The provisions of this §335.272 adopted to be effective effective April 12, 2001, 26 TexReg 2741.

SUBCHAPTER I. PROHIBITION ON OPEN DUMPS

§ 335.301. Purpose

The purpose of this subchapter is to authorize the executive director to evaluate nonhazardous industrial solid waste land disposal facilities and practices in order to determine whether the facilities or practices constitute open dumps.

Source: The provisions of this §335.301 adopted to be effective May 28, 1986, 11 TexReg 2350.

§ 335.302. Prohibitions

(a) Any solid waste management practice or disposal of industrial solid waste which constitutes the open dumping of industrial solid waste is prohibited, except in the case of any practice or disposal of industrial solid waste under a timetable or schedule for compliance established under the Resource Conservation and Recovery Act of 1976, §4005(c), and §335.304 of this title (relating to Classification of Facilities).

(b) Where a schedule for compliance has not been established by the executive director, no person may cause, suffer, allow, or permit any activity of disposal of industrial solid waste at a facility which has been classified as an open dump by the executive director.

Source: The provisions of this §335.302 adopted to be effective May 28, 1986, 11 TexReg 2350.

§ 335.303. Criteria for Classification of Solid Waste Disposal Facilities and Practices

Except to the extent that they are clearly inconsistent with the express provisions of Texas Health and Safety Code, Chapter 361, or the rules of the commission, the regulations contained in 40 Code of Federal Regulations (CFR) Part 257 are adopted by reference. The executive director will maintain in the offices of the commission a set of the regulations contained in 40 CFR Part 257 and adopted by reference herein. The regulations may be examined in the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

Source: The provisions of this §335.303 adopted to be effective May 28, 1986, 11 TexReg 2350; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.304. Classification of Facilities

The executive director may evaluate all existing solid waste disposal facilities, except those exempted under 40 Code of Federal Regulations (CFR) §257.1,

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cable to Owners or Operators of Storage, Processing, or Disposal Facilities) with respect to all manifested wastes received;

(2) comply with the requirements of §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) with respect to all manifested wastes received;

(3) handle on-site all received or aggregated hazardous household waste in the same manner as if the waste were defined as a hazardous waste under Texas Health and Safety Code, Chapter 361;

(4) comply with the requirements of paragraphs (1)–(3) of §335.4 of this title (relating to General Prohibitions) with respect to all waste received; and

(5) obtain written authorization from the commission to receive hazardous household waste.

Source: The provisions of this §335.412 adopted to be effective March 12, 1987, 12 TexReg 666; amended to be effective November 15, 2001, 26 TexReg 9135.

SUBCHAPTER O. LAND DISPOSAL RESTRICTIONS

§ 335.431. Purpose, Scope, and Applicability

(a) Purpose. The purpose of this subchapter is to identify hazardous wastes that are restricted from land disposal and define those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Scope and Applicability.

(1) Except as provided in paragraph (2) of this subsection, the requirements of this subchapter apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(2) The requirements of this subchapter do not apply to any entity that is either specifically excluded from coverage by this subchapter or would be excluded from the coverage of 40 Code of Federal Regulations (CFR), Part 268 by 40 CFR, Part 261, if those parts applied.

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule) are exempt from 40 CFR §268.7 and §268.50.

(c) Adoption by Reference.

(1) except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR Part 268, as amended through December 26, 2000 (65 FR 81373) are adopted by reference.

(2) The following sections of 40 CFR, Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: §§268.1(f), 268.5, 268.6, 268.7(a)(10), 268.13, §268.42(b), and 268.44.

(3) Appendices IV, VI–IX, and XI of 40 CFR, Part 268 are adopted by reference as amended through May 26, 1998 (63 FR 28705).

(d) Changes to Adopted Parts. The parts of the CFR that are adopted by reference in subsection (c) of this section are changed as follows:

(1) The words "Administrator" or "Regional Administrator" are changed to "Executive Director;"

(2) The word "treatment" is changed to "processing;"

(3) The words "Federal Register," when they appear in the text of the regulation, are changed to "Texas Register;"

(4) In §268.7(a)(6) and (a)(7), the applicable definition of hazardous waste and solid waste is the one that is set out in this chapter rather than the definition of hazardous waste and solid waste that is set out in 40 CFR Part 261.

(5) In §268.50(a)(1), the citation to "§262.34" is changed to "§335.69."

Source: The provisions of this §335.431 adopted to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969; amended to be effective March 22, 1995, 20 TexReg 1657; amended to be effective October 19, 1998, 23 TexReg 10878; amended to be effective April 4, 1999, 24 TexReg 2352; amended to be effective April 30, 2000, 25 TexReg 3547; amended to be effective November 15, 2001, 26 TexReg 9135.

SUBCHAPTER P. WARNING SIGNS AND CONTAMINATED AREAS

§ 335.441. Purpose, Scope, and Applicability

The purpose of this subchapter is to provide standards and procedures for the placement of warning signs on property contaminated with hazardous substances when such contamination presents a danger to public health and safety.

Source: The provisions of this §335.441 adopted to be effective October 31, 1990, 15 TexReg 6068.

§ 335.442. Definitions

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

(1) Contaminated property—Property on which hazardous substances in known or potentially harmful quantities have been released, spilled, leaked, pumped, poured, emitted, entered, or dumped.

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an eight-digit waste code number which shall include a four-digit waste sequence number, a three-digit form code, and a one-character classification (either H, 1, 2, or 3). Form codes are provided in §335.521(c) of this title (relating to Appendix 3). Procedures for assigning waste code numbers and sequence numbers are outlined as follows and available from the agency at the address listed in §335.521(b) of this title (relating to Appendix 2).

(1) A waste code is represented by the following 8-digit character string: sequence number + form code + classification code (H, 1, 2, or 3).

(2) In-state generators will assign a unique four-digit sequence number to each individual waste. These sequence numbers will range from 0001 to 9999. They need not be assigned in sequential order. An in-state registered generator may choose to request the executive director assign a sequence number to a specific waste which is not regularly generated by a facility and is being shipped as a one-time shipment or choose to add that waste to the regular sequence numbers on a notice of registration. Sequence numbers provided by the executive director may be a combination of alpha and numeric characters.

(3) The executive director will provide in-state unregistered generators a four-digit sequence number for each regulated waste it generates, which may be a combination of alpha and numeric characters.

(4) Generators of wastes resulting from a spill may obtain a sequence number for the spill related wastes from the agency's Emergency Response Section.

(5) Out-of-state generators will use the sequence code "OUTS" in the first four digits of the waste code.

(6) CESQGs or industrial Class 1 non-hazardous waste generators that are exempt from manifesting as specified in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) who voluntarily manifest their hazardous and or Class 1 nonhazardous waste may use "CESQ" as the first four digits of the waste code.

(7) A facility which receives and consolidates like waste from Municipal Conditionally Exempt Small Quantity Generators should use "CESQ" in the first four positions of the waste code for any manifesting and/or reporting associated with that waste.

(8) A facility which receives a waste and consolidates that waste with other like waste, other than its own, (thus not changing the form code of the waste stream or its composition, hazardous, or Texas waste class), or stores a waste without treating, processing (as defined in §335.1 of this title (relating to Definitions)), or changing the form or composition of that waste may ship that waste to a storage, treatment, or disposal facility using the sequence code "TSDF" in the first four positions of the waste code. This does not pertain to wastes which are treated or altered or combined with unlike wastes. This "TSDF" designation is only to be used by facilities that store and/or accumulate a quantity of wastes from more than one site for subsequent shipment to a treatment or disposal facility. Manifest documents must note a final destination designated to receive a consolidated waste. The designated "final destination" receiving facility noted on the manifest must be a permitted facility in order to terminate the manifest, unless the waste is nonhazardous and does not require manifesting in accordance with §335.10(g) of this title and is going to a facility described in §335.10(g) of this title. A consolidated waste shipped to a non-permitted facility prior to being shipped to the final destination must proceed with the original manifests (noted with any appropriate changes) to the facility designated on the manifest for final handling.

Source: The provisions of this §335.503 adopted to be effective November 27, 1992, 17 TexReg 8010; amended to be effective February 24, 1994, 19 TexReg 1042; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective May 30, 1995, 20 TexReg 3722; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective November 15, 2001, 26 TexReg 9135.

§ 335.504. Hazardous Waste Determination

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions).

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart D.

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C.

Source: The provisions of this §335.504 adopted to be effective November 27, 1992, 17 TexReg 8010; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective March 6, 1996, 21 TexReg 2400; amended to be effective November 15, 2001, 26 TexReg 9135.

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Texas Administrative Code

Title 30 Environmental Quality

2000—Part One

[Replaces 1999 Pamphlet]

Amendments effective through
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~~Action on Application for Amendment) are satisfied.~~

(7) The executive director may grant permission for permittees of non-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations § 122.21(g)(10) after the permit expiration date.

(b) This section does not apply to applications for renewal of radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

Source: The provisions of this §305.63 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 5, 1997, 22 TexReg 4583; ~~amended to be effective September 23, 1999, 24 TexReg 8309~~

§ 305.64. Transfer of Permits

~~(a) A permit is issued in personam and may be~~ transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) name and address of the transferee;

(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

(4) a fee of $100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fees);

(5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated ~~therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not~~ intended to relieve a transfer or of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the ~~transferee, if any.~~

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361, changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of 40 Code of Federal Regulations (CFR) Part 264, Subpart H, as adopted by reference in §335.152(a)(6) of this title (relating to Standards), until the new owner or operator has demonstrated to the executive director that he is complying with the requirements of 40 CFR Part 264, Subpart H. The new owner or operator must demonstrate compliance with 40 CFR Part 264, Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with 40 CFR Part 264, Subpart H, the executive director shall notify the old owner or operator that he no longer needs to comply with 40 CFR Part 264, Subpart H as of the date of demonstration.

~~(h) The commission may transfer permits to an~~ interim permittee pending an ultimate decision on a permit transfer ~~if it finds one or more of the following:~~

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Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(107) 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 hazardous waste, designed to change the physical, chemical, or biological character or composition of any 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 Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended.

(108) 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 Clean Water Act, §502(4)). The definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

(109) 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.

(110) Receiving country—A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(111) Regional administrator—The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

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

(113) 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 the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action). 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 the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

(114) 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 storage, processing, or disposal.

(115) 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 EPA or state approved corrective action.

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

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Texas Administrative Code

Title 30 Environmental Quality

2000—Part Two

[Replaces 1999 Pamphlet]

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the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste.

(e) Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

(f) Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.

(g) 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 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.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) 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 §334.24 of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 Code of Federal Regulations (CFR) §266.108 must provide a one-time signed, written notification to the United States Environmental Protection Agency 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 and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG 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).

(k) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to 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), §335.24 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 Materials).

Source: The provisions of this §335.6 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective July 29, 1992, 17 TexReg 5616; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective May 12, 1993, 18 TexReg 2799; amended to be effective June 28, 1993, 18 TexReg 3814; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective May 30, 1995, 20 TexReg 3722; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400; amended to be effective December 15, 1997, 22 TexReg 12060; amended to be effective October 19, 1998, 23 TexReg 10878.

§ 335.7. Bond or Other Financial Assurance Required

Authority to store, process, or dispose of industrial solid waste or municipal hazardous waste pursuant to a permit issued by the commission is contingent upon the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director, in an amount specified in the permit, which provides for the closing of the solid waste storage, processing, or disposal facility in accordance with the permit issued for the facility

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and all other rules of the commission. The commission may require the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director for the closing of any solid waste facility exempt from the requirement of a permit under this chapter, but subject to the requirement of a permit under the Texas Water Code, Chapter 26. Persons storing, processing, or disposing of hazardous waste are subject to further requirements concerning financial assurance and closure and post-closure contained in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

Source: The provisions of this §335.7 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective January 5, 1988, 12 TexReg 2335.

~~§ 335.8. Closure and Remediation~~

(a) Applicability. The regulations of this section, in addition to other applicable rules, permits, or orders, establish the obligation for persons to perform closures or remediations for facilities or areas containing industrial solid waste or municipal hazardous waste. The person can fulfill this obligation by meeting the risk reduction standards of this section or the remedy standards of Chapter 350 of this title (relating to Texas Risk Reduction Program), depending on the time of initial notification to the executive director of intent to conduct closure or remediation. The regulations of this section will remain in effect for persons who notify the executive director before May 1, 2000, of a closure or remediation in accordance with this section, unless the person elects to comply fully with Chapter 350 of this title prior to that date. Persons who notify of a closure or remediation in response to this section have up to five years from May 1, 2000, within which to submit for executive director review and approval according to this section a final report which demonstrates attainment of risk reduction standards 1 or 2. Persons will automatically qualify for this grandfathering provision if they have received a letter from the agency acknowledging receipt of the initial notification, or submit other forms of documentation by May 1, 2001, that proper and timely notification had been made. The person who has submitted a final remedial investigation report that fully complies with §335.553(b)(1) of this title (relating to Risk Reduction Standard Number 3), prior to May 1, 2001, may elect to either continue under these rules or to proceed under Chapter 350 of this title. Any person who qualifies for this grandfathering provision and elects to continue using the provisions of this section may not use any of the provisions of Chapter 350 of this title. If the executive director denies approval of the final remedial investigation report under this section for reasons of technical inadequacy, the executive director may require the person to comply with the requirements of Chapter 350 of this title. For closures and remediations initially reported to the executive director on or after May 1, 2000, the person shall use the procedures of Chapter 350 of this title. The regulations in this section supplement but do not replace any requirements for closure or remediation specified in the regulations for the programs subject to these rules and shall continue to apply as specified in paragraphs (1)–(4) of this subsection to persons who qualify for this grandfathering provision.

(1) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §335.2(a) of this title (relating to Permit Required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(2) Any person who stores, processes, or disposes of hazardous waste is also subject to the applicable provisions relating to closure and post-closure in Subchapters E and F of this chapter (relating to Interim Standards for Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, respectively).

(3) Persons who have received approval of closure or remediation plans by the executive director and have either completed or not completed the action prior to June 28, 1993, may either maintain or complete the action, as applicable, according to the approved plan and are not subject to the requirements of this section unless a substantial change in circumstances develops at the facility or area which results in an unacceptable threat to human health or the environment as described in §350.35 of this title (relating to Substantial Change in Circumstances). Plans or reports submitted but not approved prior to June 28, 1993, will be reviewed according to the regulations in effect at the time of document submittal. If the executive director denies approval of the plan or report under those regulations for reasons of technical inadequacy, the person must then comply with the requirements of Chapter 350 of this title upon receipt of written notice from the executive director that the plan or report is not approved.

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(c) The following words and terms, when used in subsection (b) of this section, shall have the following meanings, unless the text clearly indicates otherwise.

(1) On-site storage, processing, or disposal—On-site storage, processing, or disposal occurs when industrial solid waste is:

(A) collected, handled, stored, processed, or disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial waste; and

(B) the industrial solid waste is not collected, handled, stored, processed, or disposed of with solid 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) Commenced on-site storage, processing, or disposal of hazardous waste—A person has commenced on-site storage, processing, or disposal of hazardous waste 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:

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

(B) 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) Subsection (b) of this section 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.

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

Source: The provisions of this §335.43 adopted to be effective September 1, 1986, 11 TexReg 3695; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective August 14, 1990, 15 TexReg 4397; amended to be effective November 7, 1991, 16 TexReg 6065.

§ 335.44. Application for Existing On-Site Facilities

(a) In order to satisfy the application deadline specified in §335.43(b) of this title (relating to Permit Required), an application must be submitted prior to that date which contains information defining the following:

(1) owner(s) and operator(s) of the facility;

(2) description of the site;

(3) description of the facility and all facility components;

(4) identification of wastes generated, stored, processed, or disposed, together with quantities and sources; and

(5) methods and types of operations used in the storage, processing, or disposal of wastes.

(b) In addition to the information required in subsection (a) of this section, a complete application, required prior to action on an application by the commission, must include the following:

(1) engineering plans and specifications and other documentation necessary to demonstrate that all components of the facility design, construction, and operation conform to standards established by the commission; and

(2) information describing actions necessary to bring existing facilities into compliance with commission standards and a schedule for completion of such actions.

(c) An application form can be obtained from the executive director for each geographical location for which the storage, processing, or disposal of hazardous waste is proposed.

(d) The application shall be signed by the applicant or by a duly authorized agent, employee, officer, or representative of the applicant and shall be verified before a notary public.

Source: The provisions of this §335.44 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective September 1, 1986, 11 TexReg 3695.

§ 335.45. Effect on Existing Facilities

(a) Effect on permitted off-site facilities. Subchapters B-E of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste;

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(1) the owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal;

(2) the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment; and

(3) the owner or operator of an injection well used to dispose of hazardous waste.

(b) To be eligible for a permit by rule, such person shall comply with the requirements of 40 Code of Federal Regulations §270.60 and the following rules:

(1) 40 Code of Federal Regulations §264.11 (EPA identification number);

(2) 40 Code of Federal Regulations §264.72 (manifest discrepancies);

(3) 40 Code of Federal Regulations §264.73(a) and (b)(1) (operating record);

(4) 40 Code of Federal Regulations §264.76 (unmanifested waste report);

(5) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners of Storage, Processing, or Disposal Facilities) (shipping and reporting procedures); and

(6) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators) (annual and monthly reports).

(c) In addition to the requirements stated in subsection (b) of this section, the owner or operator of an injection well used to dispose of hazardous waste shall:

(1) comply with the applicable personnel training requirements of 40 Code of Federal Regulations §264.16;

(2) when abandonment is completed, submit to the executive director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in §331.46 of this title (relating to Plugging and Abandonment Standards); and

(3) for underground injection control permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). Where the underground injection well is the only unit at a facility which requires a permit, comply with 40 Code of Federal Regulations §270.14(d) (concerning information requirements for solid waste management units). Persons who dispose of hazardous waste by means of underground injection must obtain a permit under the Texas Water Code, Chapter 27.

(d) In addition to the requirements stated in subsection (b) of this section, the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment shall:

(1) meet all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance; and

(2) for National Pollutant Discharge Elimination System (NPDES) permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

Source: The provisions of §335.47 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective November 23, 1993, 18 TexReg 8218.

SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

§ 335.61. Purpose, Scope and Applicability

(a) Except as provided in subsection (b) of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) The provisions of this subchapter with which a generator who stores, processes, or disposes of hazardous waste on-site must comply are §335.62 of this title (relating to Hazardous Waste Determination), §335.63 of this title (relating to EPA Identification Numbers), §335.70 of this title (relating to Recordkeeping), §335.73 of this title (relating to Additional Reporting), and, if applicable, §335.77 of this title (relating to Farmers), and §335.69 of this title (relating to Accumulation Time).

(c) Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators.

(d) An owner or operator who initiates a shipment of hazardous waste from a processing, storage, or disposal facility must comply with the generator

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of the countries listed in 40 CFR §262.58(a)(1) for purposes of recovery is subject to this subchapter and to all other relevant requirements of 40 CFR Part 262, Subpart H, including, but not limited to, 40 CFR §262.84 for tracking documents.

Source: The provisions of this §335.91 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective October 19, 1998, 23 TexReg 10878.

§ 335.92. EPA Identification Number

A transporter must not transport hazardous wastes without having received an Environmental Protection Agency (EPA) identification number.

Source: The provisions of this §335.92 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.93. Hazardous Waste Discharges

(a) In the event of a discharge of hazardous waste during transportation, the transporter shall notify the commission as soon as possible and not later than 24 hours after the occurrence, according to the provisions of the Texas Water Code, §26.039, and the procedures set out in the State Oil and Hazardous Substances Spill Contingency Plan, and also take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge).

(b) If a discharge of hazardous waste occurs during transportation and a commission official acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must also:

(1) give notice, if required by 49 Code of Federal Regulations §171.15, to the National Response Center (800-424-8802 or 202-426-2675); and

(2) report in writing as required by 49 Code of Federal Regulations §171.16 to the Director, Office of Hazardous Waste Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 Code of Federal Regulations §153.203 for oil and hazardous substances.

(e) A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by the commission so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

Source: The provisions of this §335.93 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.94. Transfer Facility Requirements

(a) Unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §335.65 of this title (relating to Packaging) at a transfer facility for a period of 10 days or less is not subject to the requirement for a permit under §335.2 of this title (relating to Permit Required), with respect to the storage of those wastes provided that the transporter complies with the following sections:

(1) 40 Code of Federal Regulations §265.14 relating to Security);

(2) 40 Code of Federal Regulations §265.15 (relating to General Inspection Requirements);

(3) 40 Code of Federal Regulations §265.16 (relating to Personnel Training);

(4) 40 Code of Federal Regulations Part 265, Subpart C;

(5) 40 Code of Federal Regulations Part 265, Subpart D (except §265.56(j)) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(6) 40 Code of Federal Regulations Part 265, Subpart I.

(b) The executive director may require a permit for that portion of a facility otherwise exempted from that requirement under subsection (a) of this section, with respect to the storage of hazardous waste in containers, if the facility's operation also includes other storage and processing of hazardous waste which is not exempt under subsection (a) of this section.

Source: The provisions of this §335.94 adopted to be effective May 28, 1986, 11 TexReg 2347.

SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

§ 335.111. Purpose, Scope, and Applicability

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issu-

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extent of contamination.

(B) Corrective action measures under this section may be terminated once the concentration of hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) is reduced to levels below their respective concentration under §335.160 of this title (relating to Concentration Limits).

(6) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under paragraph (4) of this section, that the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) has not been exceeded for a period of three consecutive years.

(7) The owner or operator must report in writing to the executive director on the effectiveness of the corrective action program. The owner or operator must submit these reports semiannually.

(8) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

Source: The provisions of this §335.166 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218.

§ 335.167. Corrective Action for Solid Waste Management Units

(a) The owner or operator of a facility seeking a permit for the processing, storage, or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) Corrective action will be specified in the compliance plan under §305.401 of this title (relating to Groundwater Compliance Plan) and in accordance with this section, 40 Code of Federal Regulations, Part 264, Subpart S, and §335.152 of this title (relating to Standards). The plan will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or plan) and assurances of financial responsibility for completing such corrective action.

(c) The owner or operator must implement corrective actions beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided to the executive director.

Source: The provisions of this §335.167 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969.

§ 335.168. Design and Operating Requirements (Surface Impoundments)

(a) Any surface impoundment that is not covered by subsection (c) of this section or 40 Code of Federal Regulations §265.221 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with §335.169(a)(1) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)). For impoundments that will be closed in accordance with §335.169(a)(2) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)), the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) constructed or materials that have appropri-

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not require manifesting in accordance with §335.10(g) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and is going to a facility described in §335.10(g) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). A consolidated waste shipped to a non-permitted facility prior to being shipped to the final destination must proceed with the original manifests (noted with any appropriate changes) to the facility designated on the manifest for final handling.

Source: The provisions of this §335.503 adopted to be effective November 27, 1992, 17 TexReg 8010; amended to be effective February 24, 1994, 19 TexReg 1042; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective May 30, 1995, 20 TexReg 3722; amended to be effective March 1, 1996, 21 TexReg 1425.

Authority: The provisions of this Subchapter R issued under the Texas Water Code, §5.103 and §26.011; and the Texas Solid Waste Disposal Act, §361.017.

§ 335.504. Hazardous Waste Determination

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded from being a solid waste or hazardous waste per 40 Code of Federal Regulations §§261.2, 261.3, or 261.4.

(2) If your material is a waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart D.

(3) For purposes of complying with 40 CFR Part 268 or if the waste is not listed as a hazardous waste in 40 CFR Part 261, Subpart D, he or she must then determine whether the waste exhibits any characteristics of a hazardous waste as is identified in 40 CFR Part 261, Subpart C, by either:

(A) Testing the waste according to methods set forth in 40 CFR Part 261, Subpart C, or according to an equivalent method approved by the administrator under 40 CFR §260.21; or

(B) Applying knowledge of the hazardous characteristic of the waste in light of the materials and/or process used to generate the waste, pursuant to §335.511 of this title (relating to Use of Process Knowledge).

(4) For purposes of complying with Chapter 324 of this title (relating to Used Oil), if the waste is a used oil, determine whether used oil is a listed hazardous waste per 40 Code of Federal Regulations §261.3(a)(2)(v). Used oil made hazardous by mixing with listed or characteristically hazardous waste is regulated as hazardous waste under this chapter. Other used oil that is to be recycled is managed per Chapter 324 of this title.

Source: The provisions of this §335.504 adopted to be effective November 27, 1992, 17 TexReg 8010; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective March 6, 1996, 21 TexReg 2400.

Authority: The provisions of this Subchapter R issued under the Texas Water Code, §5.103 and §26.011; and the Texas Solid Waste Disposal Act, §361.017.

§ 335.505. Class 1 Waste Determination

A nonhazardous industrial solid waste is a Class 1 waste if:

(1) it contains specific constituents which equal or exceed the levels listed in §335.521(a)(1) of this title (relating to Appendix 1, Table 1) as determined by the methods outlined in this section. A nonhazardous waste is a Class 1 waste if, using the test methods described in 40 CFR Part 261 Appendix II, or equivalent methods approved by the executive director under the procedures set forth in §335.509 of this title (relating to Waste Analysis), the extract from a representative sample of the waste contains any of the contaminants listed in §335.521(a)(1) at a concentration equal to or greater than the Maximum Concentration given in that table. Information on representative samples is set forth in §335.509 of this title (relating to Waste Analysis). Where matrix interferences of the waste cause the Practical Quantitation Limit (PQL) of the specific analysis to be greater than the Maximum Concentration listed in §335.521(a)(1), then the achievable PQL becomes the Maximum Concentration, provided that the generator maintains documentation which would satisfactorily demonstrate to the executive director that lower levels of quantitation of a sample are not possible. A satisfactory demonstration includes the results from the analysis of the waste for that specific analyte by a laboratory utilizing an appropriate method described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (EPA SW-846), "Methods for Chemical Analysis of Water and Wastes" (EPA-600/4-79/020), "Standard Methods for the Examination of Water and Wastewater," "American Society for Testing and Materials (ASTM) Standard Methods," any EPA-approved method, or an equivalent method approved by the executive director under procedures set forth in §335.509 of this title (relating to Waste Analysis);

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tions to Discharge), before the date of the commission's public hearing to consider the authorization.

Source: The provisions of this §305.27 adopted to be effective June 19, 1986, 11 TexReg 2591.

Cross References: This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge).

§ 305.28. Renewals of Emergency Orders and Temporary Orders

The duration of any discharge emergency order or temporary order issued pursuant to this chapter shall not exceed 180 days, but the orders may be renewed one time upon proper application. Applications for renewal may be filed with the commission, along with payment of the application fee. Renewal applications will be treated as new applications and the temporary order application procedures of this chapter will be followed.

Source: The provisions of this §305.28 adopted to be effective June 19, 1986, 11 TexReg 2591.

§ 305.29. Emergency Orders for Solid Waste Activities

(a) The commission may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of solid waste management within its jurisdiction, whether such activity is covered by a permit or not, if the commission determines that an emergency exists requiring immediate action to protect the public health and safety or the environment. The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing to be held by the commission in accordance with commission rules, so as to affirm, modify, or set aside the emergency order.

(c) The requirements of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4), relating to public notice, do not apply to a hearing to affirm, modify, or set aside an emergency order issued under this section, but such general notice of the hearing shall be given in accordance with commission rules.

(d) Any emergency order issued under this section shall not exceed 90 days in duration, but may be renewed.

Source: The provisions of this §305.29 adopted to be effective June 19, 1986, 11 TexReg 2591.

Cross References: This Section cited in 30 TAC §305.27, (relating to Application Fees).

§ 305.30. Emergency Actions Concerning Hazardous Waste

(a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized in order to alleviate an imminent and substantial endangerment to human health or safety or the environment and if there are no alternative, permitted facilities that are reasonably available for the proper management of the waste, the commission, on its own motion or the request of the executive director or any other party, may issue an emergency order authorizing the processing, storage, or disposal of the hazardous waste at a nonpermitted facility or at a permitted facility with no authorization under its permit to receive the hazardous waste in need of immediate management.

(b) A party, other than the executive director, requesting an emergency order approving the storage, processing, or disposal of hazardous waste, shall file a written request with the executive director setting forth the reason for the request, including a description of the imminent and substantial endangerment to human health or safety or the environment, and alternatives investigated.

(c) The executive director shall review the request and may require the applicant for an emergency order to supply additional information as may be reasonably required to assist the commission in making the necessary findings set out in subsection (a) of this section.

(d) The executive director shall forward the request for an emergency order and the executive director's recommendation, including any proposed emergency order and findings to the commission.

(e) Any emergency order issued by commission under this section:

(1) shall not exceed 90 days in duration;

(2) shall clearly specify the hazardous wastes to be received, and the manner and location of their processing, storage, or disposal;

(3) may be terminated by the commission at any time without notice and hearing if it determines that termination is appropriate to protect human health or the environment; and

(4) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

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Natural Resource Conservation Commission for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees pursuant to paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of $50 to be applied toward the cost of providing required notice. A fee of $15 is required with each application for renewal.

Source: The provisions of this §305.53 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective March 10, 1994, 19 TexReg 1376.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.64, (relating to Transfer of Permits); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.184, (relating to Application Requirements); 30 TAC §335.321, (relating to Purpose).

SUBCHAPTER D. AMENDMENTS, MODIFICATIONS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

Cross References: This Subchapter cited in 30 TAC §305.572, (relating to Permit and Trial Burn Requirements); 30 TAC §331.68, (relating to Post-Closure Care).

§ 305.61. Applicability

The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of permits.

Source: The provisions of this §305.61 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements).

§ 305.62. Amendment

(a) Causes for amendment. Except as provided in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), and in §305.66 of this title (relating to Corrections of Permits), a change in a term, condition, or provision of a permit requires an amendment. The permittee or an affected person may request an amendment to a permit. If the permittee requests an amendment, the application shall be processed in accordance with Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a hazardous or industrial solid waste permit, the application shall be processed in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title (relating to Municipal Solid Waste Class I Modifications). If an affected person requests an amendment, such request shall be submitted to the executive director for review. If the executive director determines such a request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting such amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that such a request is justified, the amendment will be processed in accordance with subsections (d) and (f) of this section.

(b) Application for amendment. An application for an amendment to a permit shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in §§305.41-305.53 of this title (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection, except a minor amendment to a Texas pollutant discharge elimination system (TPDES) permit which is defined in subparagraph (C) of this paragraph. A minor amendment includes any other change to a permit issued under this chapter that will not cause a potential deterioration of quality of water in the state nor relax a standard or criterion which

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may result in a potential deterioration of quality of water in the state. A minor amendment also includes, but is not limited to, the following:

(A) changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(B) requiring more frequent monitoring or reporting by the permittee; and

(C) for TPDES permits, only the following changes constitute minor amendments:

(i) correct typographical errors;

(ii) require more frequent monitoring or reporting by the permittee;

(iii) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(iv) change a new source construction schedule or delete a point source outfall as follows:

(I) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 Code of Federal Regulations (CFR) §122.19;

(II) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

(v) when the permit becomes final and effective on or after March 9, 1982, conform to changes respecting to 40 CFR §122.41(e), (*l*), (m)(4)(i)(B), and §122.42(a) issued September 26, 1984; or

(vi) incorporate conditions of a publicly owned treatment work (POTW) pretreatment program that has been approved in accordance with the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution) as enforceable conditions of the POTW's permit.

~~(d) Good cause for amendments. If good cause~~ exists, the executive director may initiate and the commission may order an amendment to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to, the following:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information not available at the time of permit issuance is received by the executive director, and such information justifies amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions To Be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice ~~period shall not be jurisdictional.~~

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(k) For applications for any new commercial hazardous waste management facility permits, the commission shall not grant such an application if the applicant is without experience in the particular hazardous waste management technology and has not conspicuously stated that lack of experience in the application, and the commission shall not grant such an application unless the applicant provides a summary of its experience, pursuant to §305.50(12)(D) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit). The commission may not deny an application for a new commercial hazardous waste management facility permit solely on the basis of lack of experience of the applicant.

(*l*) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

Source: The provisions of this §305.66 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.63, (relating to Renewal); 30 TAC §305.67, (relating to Revocation and Suspension upon Request or Consent); 30 TAC §305.122, (relating to Characteristics of Permits); 30 TAC §305.141, (relating to Applicability); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements); 30 TAC §321.190, (relating to Renewal); 30 TAC §331.12, (relating to Conversion of Wells); 30 TAC §335.180, (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 305.67. Revocation and Suspension upon Request or Consent

(a) If a permittee no longer desires to continue a waste disposal activity or to dispose of waste under a permit, or is agreeable to a suspension of authorization to do so for a specified period of time, the permittee should file with the executive director a written request or a written consent and waiver not later than 10 days following receipt of notice of the intention to file a petition under §305.66 of this title (relating to Revocation and Suspension).

(b) If a permittee requests or consents to the revocation or suspension of the permit, the executive director may revoke or suspend the permit without the necessity of a public hearing or commission action. The executive director shall notify the commission of each such revocation or suspension.

Source: The provisions of this §305.67 adopted to be effective June 19, 1986, 11 TexReg 2594.

Cross References: This Section cited in 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements); 30 TAC §331.12, (relating to Conversion of Wells).

§ 305.68. Action and Notice on Petition for Revocation or Suspension

(a) In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission, notice of which shall be given to the permittee not less than 30 days prior to the hearing by certified mail, return receipt requested, of the time and place of the hearing. For permits or orders involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, public notice shall be given by publication, by mail and by radio broadcast, in accordance with §§ 305.102-305.104 of this title (relating to Notice by Publication; Notice by Mail; and Radio Broadcasts).

(b) If the permittee requests or consents to the revocation or suspension of the permit and the executive director has not revoked or suspended the permit, the commission may take action at a regular meeting of the commission without holding a public hearing, provided notice of the hearing is given by first-class mail at least 10 days prior to the meeting. For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, notice of the hearing shall be given by first-class mail at least 30 days prior to the meeting.

Source: The provisions of this §305.68 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102.

Cross References: This Section cited in 30 TAC §305.66, (relating to Permit Denial, Suspension, and Revocation); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements).

§ 305.69. Solid Waste Permit Modification at the Request of the Permittee

(a) This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are cov-

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ered in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications).

(b) Class 1 modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of this subchapter under the following conditions:

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), and §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the commission evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the

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permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, the commission must:

(A) approve the modification request, with or without changes, and modify the permit accordingly;

(B) deny the request;

(C) determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days; or

(E) notify the permittee that it will decide on the request within the next 30 days.

(7) If the commission notifies the permittee of a 30-day extension for a decision, the commission must, no later than 120 days after receipt of the modification request:

(A) approve the modification request, with or without changes, and modify the permit accordingly;

(B) deny the request;

(C) determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification;

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days.

(8) If the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of §§335.111-335.127 of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the commission approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraphs (6) and (7) of this subsection or this paragraph, such action cancels the temporary or automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §305.103(b) of this title (relating to Notice by Mail), and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the perma-

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nent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendment) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of §§335.111-335.127 of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (e) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission may deny or change the terms of a Class 2 permit modification request under paragraphs (6)-(8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of §§335.151-335.179 of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses), and §§305.571-305.573 of this title (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §305.103 of this title (relating to Notice by Mail) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the commission. The notice shall include the following:

(A) all information required by §305.100(a) of this title (relating to Notice of Application);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

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(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of §§305.91-305.106 of this title (relating to Actions, Notice, and Hearing). When a permit is modified, only the conditions subject to modification are reopened.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this subchapter, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii)-(v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

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(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with 40 Code of Federal Regulations (CFR) Part 264 standards.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §305.103 of this title (relating to Notice by Mail). This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the standards of 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with 40 CFR, Part 268 or RCRA §3004;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §305.103(b) of this title (relating to Notice by Mail) within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the Administrative Procedure Act, the Government Code, Chapter 2002.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR, Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to RCRA Subtitle C management standards; and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater monitoring and financial responsibility requirements on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous,

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the terms and conditions embodied in the permit, and the rules and other orders of the commission.

Source: The provisions of this §305.124 adopted to be effective June 19, 1986, 11 TexReg 2597.

Cross References: This Section cited in 30 TAC §305.151, (relating to Applicability); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

§ 305.125. Standard Permit Conditions

The following conditions are applicable to all permits issued within the scope of this chapter, and shall be incorporated into each permit expressly or by reference to this chapter.

(1) The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Solid Waste Disposal Act, and for Texas pollutant disposal elimination system (TPDES) permits the Clean Water Act (CWA), and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or of an application for a permit for another facility.

(2) The permittee must apply for an amendment or renewal prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity will terminate upon the effective denial of said application.

(3) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the executive director, upon request, copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director prior to physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) Report of such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission of such information shall also be provided within five days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(B) The following shall be included as information which must be reported within 24 hours under this paragraph:

(i) any unanticipated bypass which exceeds any effluent limitation in a TPDES permit;

(ii) violation of a maximum daily discharge limitation for any of the pollutants listed in a TPDES permit to be reported within 24 hours.

(10) Inspection and entry shall be allowed as prescribed in the Texas Water Code, Chapters 26-28, the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §7, and 40 Code of Federal Regulations (CFR) §122.41(i). The statement in the Texas Water Code, §26.014, that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but

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it is in compliance with the conditions of the permit; or if within 15 days of submission of the letter required by paragraph (1) of this section, the permittee has not received notice from the executive director of an intent to inspect, prior inspection is waived, and the permittee may commence processing, storage, or disposal of solid waste.

Source: The provisions of this §305.144 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.145. Release or Discharges of Solid Waste

(a) The following shall be included as information which must be reported orally within 24 hours pursuant to §305.125(9) of this title (relating to Standard Permit Conditions):

(1) information concerning release of any solid waste that may cause an endangerment to public drinking water supplies;

(2) any information of a release or discharge of solid waste, or of a fire or explosion from a facility, which could threaten the environment or human health or safety outside the facility. The description of the occurrence and its cause shall include:

(A) name, address, and telephone number of the owner or operator;

(B) name, address, and telephone number of the facility;

(C) date, time, and type of incident;

(D) name and quantity of material(s) involved;

(E) the extent of injuries, if any;

(F) an assessment of actual or potential hazards to the environment and human health or safety outside the facility, where this is applicable; and

(G) estimated quantity and disposition of recovered material that resulted from the incident.

(b) The executive director may waive the five-day written notice requirement under §305.125(9) of this title (relating to Standard Permit Conditions) in favor of a written report pursuant to this section within 15 days.

Source: The provisions of this §305.145 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective April 8, 1987, 12 TexReg 998.

§ 305.146. Reporting

The following reports shall be submitted:

(1) manifest discrepancy report required by §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); if a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within 15 days, the permittee must submit a letter report including a copy of the manifest to the executive director. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I industrial hazardous or nonhazardous solid waste);

(2) waste report required by §335.15(c) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); a waste report must be submitted to the executive director on a monthly basis. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I hazardous or nonhazardous industrial solid waste);

(3) annual report required by §335.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators) and §335.71 of this title (relating to Annual Reporting); an annual report must be submitted covering facility activities during the previous calendar year;

(4) monthly summary required by §335.15(b) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators); a monthly summary must be submitted covering facility activities during the previous calendar year. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I waste hazardous or nonhazardous industrial solid waste).

Source: The provisions of this §305.146 adopted to be effective June 19, 1986, 11 TexReg 2597.

§ 305.147. Monitoring of Commercial Hazardous Waste Management Facility Operations

Any issued, amended, modified, transferred, extended, or renewed commercial hazardous waste

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Secondary containment—Structures (dikes, berms, and/or retaining walls) or equivalent secondary containment systems that are made of a material(s) that is sufficiently impervious to used oil and capable of containing all potential spills and releases of used oil from the tanks or containers, plus run-on water, until the facility owner or operator can take measures to clean up the released used oil and the run-on water.

Sufficiently impervious to used oil—Capable of containing all potential spills and releases of used oil to soil, surface water, and ground water from containers and tanks until the facility owner or operator can take measures to clean up the released used oil.

Synthetic oils—Oils not derived from crude oil, including those derived from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids which are used as hydraulic fluids and heat transfer fluids, such as those based on phosphate esters, diphenyl oxide or alkylated benzenes. Synthetic oils are generally used for the same purpose as crude oil derived oils, are usually mixed and managed in the same manner, and present relatively the same level of hazard after use.

Source: The provisions of this §324.2 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference).

§ 324.3. Applicability

Applicability and exemptions from applicability will be as in 40 CFR Part 279, Subpart B, and as clarified herein.

(1) A used oil that has been determined to be listed hazardous must be handled in accordance with hazardous waste rules. EPA Hazardous Waste Number "F002" shall be used on used oil that is listed hazardous due to halogenated contaminants, because the EPA has not provided a Hazardous Waste Number to properly manifest such listed hazardous waste.

(2) The requirement in 40 CFR Part 279 that refers to compliance with Parts 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in full compliance with 40 CFR Part 264/265, Subpart K. Used oil can be stored in tanks and containers not subject to 40 CFR Part 264 or 265.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10(b) (concerning Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for "ignitability only" can be mixed with used oil, but the resultant mixture cannot exhibit the hazardous characteristic of ignitability if it is to be managed under this chapter and 40 CFR Part 279. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics; the resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil derived products is also a processor subject to 40 CFR Part 279, Subpart F (concerning Standards for Used Oil Processors and Re-refiners) and §324.12 of this title (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated under this chapter and 40 CFR Part 279 until it is a spent material as defined in 40 CFR §261.1(c)(1) and §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

Source: The provisions of this §324.3 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference).

§ 324.4. Prohibitions

Prohibitions will be as in 40 CFR, Subpart B, §279.12 and as specified herein.

(1) A person shall not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

(2) A person commits an offense if, without benefit of a valid permit authorizing the particular action, the person:

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(A) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(B) knowingly mixes or commingles used oil with waste that is to be disposed of in landfills or directly disposes of used oil on land;

(C) knowingly transports, treats, stores, disposes of, recycles, markets, burns, processes, rerefines, or causes any used oil to be transported or otherwise handled within the state:

(i) without first complying with the notification/registration requirements of this rule; and/or

(ii) in violation of standards or rules for the management of used oil;

(D) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(E) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(F) intentionally makes any false statement or representation in an application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of program compliance.

(3) It is an exception to the application of paragraph (2) of this section if a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(4) It is an exception to the application of paragraph (2)(B) of this section if the mixing or commingling of used oil with waste that is to be disposed of in landfills is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances or other items of scrap, used, or obsolete metals.

Source: The provisions of this §324.4 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference); 30 TAC §324.17, (relating to Criminal Penalties).

~~§ 324.5. Notice by Retail Dealer~~

~~(a) A retail dealer who annually sells directly to the public more than 500 gallons of automotive oil annually in containers for use off-premises shall post in a prominent place a sign provided by the commission:~~

~~(1) informing the public that improper disposal~~ of used oil is prohibited by law;

(2) informing the public that used oil filters cannot be disposed of in municipal landfills or waste going to municipal landfills;

(3) prominently displaying the toll-free telephone number of the state used oil information center.

(b) Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.5 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.6. Generators

Standards for used oil generators shall be as in 40 CFR Part 279, Subpart C. A person or entity that services equipment involving removal of used oil or changes used oil at a customer's home or business and transports the used oil from the site in quantities less than or equal to 55 gallons may opt to be the generator of the used oil. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator where the used oil is removed will remain the generator.

Source: The provisions of this §324.6 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference).

§ 324.7. Collection Centers

Standards for do-it-yourselfer used oil collection centers and used oil collection centers shall be as in 40 CFR Part 279, Subpart D and as specified herein. All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers. All collection centers collecting used oil from households will be publicized by the commission.

(1) Do-it yourselfer used oil collection center:

(A) must post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) registration requirements:

(i) must register biennially, by no later than January 25 following the close of the biennial year, with the Texas Natural Resource Conservation Commission, Municipal

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Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087, utilizing a form provided by the commission. Registrations will expire on December 31 in even numbered years. Collection centers that have already registered their used oil activities prior to the effective date of this rule do not need to register again until their registrations have expired on December 1 of an even numbered year. New collection centers shall register within 30 days of initial operation;

(ii) must collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(C) must notify the commission in writing within 30 days following abandonment or closure of the collection center or the cessation of accepting household used oil from private citizens;

(D) shall annually report the amount of household used oil collected by January 25 of each year on a form provided by the commission;

(E) is not subject to the rebuttable presumption.

(2) Used Oil Collection Center:

(A) must post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) registration requirements:

(i) must register biennially, by no later than January 25 following the close of the biennial year, with the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087, utilizing a form provided by the commission. Registrations will expire on December 31 in even numbered years. Collection centers that have already registered their used oil activities prior to the effective date of this rule do not need to register again until their registrations have expired on December 1 of an even numbered year. New collection centers shall register within 30 days of initial operation;

(ii) must collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(C) must notify the commission in writing within 30 days following abandonment or closure of the collection center or the cessation of accepting household used oil from private citizens;

(D) shall report annually the amount of household and non-household used oil collected by January 25 of each year on a form provided by the commission. Mixtures of household used oil and non-household used oil shall be considered non-household used oil;

(E) is not subject to the rebuttable presumption on household used oil if it is not mixed with non-household used oil.

Source: The provisions of this §324.7 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference); 30 TAC §324.18, (relating to Civil Penalty).

§ 324.8. Limitation of Liability

(a) A person may not recover from the owner, operator, or lessor of a registered do-it-yourselfer used oil collection center or used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the commission.

(b) For purposes of this section, the owner, operator, or lessor of a do-it-yourselfer used oil collection center or a used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a do-it-yourselfer used oil collection center or a used oil collection center. This section does not apply to grossly negligent activities related to the operation of a do-it-yourselfer used oil collection center or a used oil collection center.

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§ 324.15. Spills

Whenever there is a catastrophic release or discharge of used oil and used oil reaches the environment, corrective measures must be immediately taken by the responsible person to adequately protect human health and the environment from potential damages. A spill of used oil in an amount sufficient to cause a sheen on water or a spill of automotive engine used oil or a mixture of automotive used oil and other used oil of 25 gallons or more that goes into the environment at a do-it-yourselfer used oil collection center should be reported to the commission as soon as possible and not later than 24 hours after discovery. (See 40 CFR §279.43(c) for discharges during transport.) A spill or overfill of used oil at an underground storage tank that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water shall be reported and handled as in §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills). All other used oil spills must be reported in accordance with other applicable commission requirements and agreements. The responsible person may notify the commission in any reasonable manner including by telephone, in person, or by any other method approved by the commission.

(1) During normal business hours, the responsible person may notify the regional office for the commission region in which the discharge or spill occurred; or

(2) After normal business hours, the responsible person may call the commission Emergency Response Unit 24-hour number at (512) 239-2507 or the state toll-free Spill Reporting Hotline at (800) 832-8224.

Source: The provisions of this §324.15 adopted to be effective March 6, 1996, 21 TexReg 2393.

~~§ 324.16. Polychlorinated Biphenyls (PCBs)~~

Pursuant to 40 CFR Part 279 (Table 1), the applicable standards for the burning of used oil containing PCBs shall be as set out in 40 CFR §761.20(e).

Source: The provisions of this §324.16 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.17. Criminal Penalties

(a) Except as provided by subsection (b) of this section, an offense under §324.4 of this title (relating to Prohibitions) is punishable by:

~~(1) a fine of not less than $100 or more than~~ $10,000 for each act of violation or each day of a continuing violation;

(2) imprisonment for at least six months; or

(3) both the fine and the imprisonment.

(b) If it is shown on the trial of an offense under §324.4 of this title (relating to Prohibitions) that the defendant has previously been convicted of an offense under §324.4 of this title, the offense is punishable by:

(1) a fine of not less than $200 or more than $20,000 for each act of violation or each day of a continuing violation;

(2) imprisonment for at least one year; or

(3) both the fine and the imprisonment.

Source: The provisions of this §324.17 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.18. Civil Penalty

(a) Except as provided by subsection (c) of this section, a person who violates this chapter or a rule or order adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each act of violation and for each day of violation.

(b) A civil penalty recovered in a suit brought by a local government under this section shall be divided equally between the state and the local government that brought the suit. The state shall deposit its recovery to the credit of the used oil recycling fund.

(c) The penalty imposed by this section does not apply to failure to file a report under §324.7 of this title (relating to Collection Centers).

(d) The commission, a local government in whose jurisdiction the violation occurs, or the state may bring suit to recover a penalty under this section.

Source: The provisions of this §324.18 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.19. Injunctive Relief

(a) If it appears that a violation or threat of violation of the sections under this rule or any order adopted under this rule has occurred or is about to occur and is causing or may cause immediate injury or constitutes a significant threat to the health, welfare, or personal property of a citizen or a local government, the commission, the local government, or the state may bring suit in district

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court for injunctive relief to restrain the violation or the threat of violation.

(b) In a suit for injunctive relief, the court may grant an injunctive or mandatory relief warranted by the facts, including a temporary restraining order, a temporary injunction, or a permanent injunction. Injunctive relief shall be granted without the requirement for a bond or other undertaking by any governmental entity seeking the injunction.

Source: The provisions of this §324.19 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.20. Venue

A suit for injunctive relief, for recovery of a civil penalty, or both, may be brought in:

(1) the county in which the defendant resides;

(2) the county in which the violation or threat of violation occurs; or

(3) Travis County.

Source: The provisions of this §324.20 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.21. Suspension or Revocation of Registration

(a) The commission may suspend or revoke a registration for:

(1) failure to maintain complete and accurate records;

(2) alteration of any record maintained or received by the registrant, outside of justified and documented corrections;

(3) delivery of used oil to an entity not registered with the commission;

(4) failure to comply with this rule or an order issued by the commission;

(5) failure to submit annual reports as required;

(6) failure to maintain financial assurance as required; or

(7) failure to reasonably perform the used oil activities for which the registration was issued.

(b) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a facility shall not possess or accept used oil regulated under this rule.

(c) The holder of a used oil registration that has been revoked by the commission may reapply for registration pursuant to this rule as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the commission a second time, the revocation shall be permanent.

(d) Appeal of a suspension or revocation of registration procedures are as follows.

(1) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation of registration has been sent from the executive director to the last known address of the applicant.

(2) An opportunity for a formal hearing may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of registration suspension or revocation has been sent from the executive director to the last known address listed on the application. If the registration is denied, a person shall not possess used oil regulated under this rule.

(3) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2002 (Vernon 1992), the Texas Solid Waste Disposal Act, Texas Health, and Safety Code, Chapters 361 and 371 (Vernon 1992), and the rules of the commission.

Source: The provisions of this §324.21 adopted to be effective March 6, 1996, 21 TexReg 2393.

CHAPTER 325. CERTIFICATES OF COMPETENCY

Section		Section	
325.1.	Definitions.	325.4.	(Effective Beginning September 1, 1991)—Classification of Wastewater Treatment Facilities.
325.2.	Certificates for Wastewater Treatment Plant Operators.	325.5.	Applications and Fees.
325.3.	Certificates for Collection System Operators.	325.6.	Renewal of Operator Certificates.

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tion for Existing On-Site 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.

(d) No permit shall be required for the storage, processing, or disposal of industrial solid waste which is not hazardous industrial waste, if the waste is disposed of 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. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §335.6 of this title (relating to Notification Requirements).

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(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 Code of Federal Regulations §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste which is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements set out at 40 Code of Federal Regulations §261.4(e) and (f), as amended and adopted in the Code of Federal Regulations through February 18, 1994, at 59 FedReg 8362, which are adopted herein by reference.

(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 which has qualified for interim status pursuant to 40 Code of Federal Regulations, Part 270, Subpart G, and which has complied 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), by complying with the notification and information requirements as set forth 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 Title 40, Code of Federal Regulations §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. 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 in compliance 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 as otherwise provided by law. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is ex-

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(1) a metes and bounds description of the portion or portions of the tract of land on which disposal of industrial solid waste or municipal hazardous waste will take place;

(2) the class or classes of industrial solid wastes or municipal hazardous wastes to be disposed of and waste description; and

(3) the name or permanent address of the person or persons operating the facility where more specific information on the disposal activity can be obtained.

(b) Proof of recordation. Proof of recordation shall be provided to the executive director in writing prior to instituting disposal operations.

(c) Additional requirements. Owners of property on which facilities for disposal of hazardous waste are located are subject to further requirements adopted by reference in §335.112(a)(6) of this title (relating to Standards).

Source: The provisions of this §335.5 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective June 28, 1993, 18 TexReg 3814.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.554, (relating to Attainment of Risk Reduction Standard Number 1: Closure/Remediation to Background).

§ 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), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Non-hazardous 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.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, and the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(c) Any person who generates hazardous waste in a quantity greater than the limits 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 greater than 100 kilograms in a calendar month of industrial non-hazardous Class 1 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 1 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 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide written notice to the executive director of any such 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 requirements of this subchapter and to the additional requirements of §335.503 of this title

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in §335.553(a) of this title (relating to Required Information).

(3) If the person intends to attain Risk Reduction Standard Number 3, or determines that Standard Numbers 1 or 2 have not been attained in a self-implemented action, the person shall submit to the executive director the information specified in §335.553(b) of this title (relating to Required Information) for approval prior to beginning, or continuing, as applicable, the closure or remediation activities.

(4) The person may include one or more waste management units or areas in a submittal for the purpose of responding to this subsection and subsection (d) of this section.

(5) Notwithstanding any other requirement, the person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the closure or remediation is compliant with this section.

(d) Demonstration of conformance with risk reduction standards. Upon completion of a closure or remediation, the person shall demonstrate in a form acceptable to the executive director that the activity meets the intended risk reduction standards and any applicable closure criteria listed or referenced in this chapter. Any submittal to the executive director in response to this subsection shall be in the form of a plan or report that contains the information specified in §335.553 of this title (relating to Required Information).

Source: The provisions of this §335.8 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective June 28, 1993, 18 TexReg 3814.

Cross References: This Section cited in 30 TAC §335.551, (relating to Purpose, Scope, and Applicability).

§ 335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous waste or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and which, at a minimum, includes the information described in subparagraphs (A)-(G) of this paragraph. These records may be maintained in any format provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) the description, character, and classification of each waste, and any changes and additional information required under §335.6(c) and (d) of this title (relating to Notification Requirements);

(B) the quantity generated;

(C) except for conditionally exempt small quantity generators regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), the quantity held in on-site storage as of December 31 of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal as described by codes listed on the form or instructions;

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the name, address, and location of each off-site facility and transporter receiving shipments;

(G) the location of all hazardous waste accumulation areas, situated at or near any point of generation, where hazardous wastes under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time).

(2) The generator shall submit to the Texas Natural Resource Conservation Commission on or before January 25 of each year a complete and correct annual waste summary detailing the management of each hazardous waste and Class 1 waste generated on site during the previous calendar year. The annual waste summary shall be submitted in a form provided or approved by the executive director. Upon written request by the generator, the executive director may authorize an extension to the report due date.

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(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) during the year, total on-site accumulation of hazardous waste did not equal or exceed 1,000 kilograms;

(B) no acute hazardous waste was generated or accumulated during the year exceeding the limits specified in §335.78(e)(1) and (2) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

(C) a total of less than 1,200 kilograms of hazardous waste, and a total of less than 1,200 kilograms of Class 1 nonhazardous waste (2,400 kilograms or less of hazardous waste plus Class 1 nonhazardous waste combined) was generated during the year.

~~(4) Generators who are regulated under~~ §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) and also meet the requirements of paragraph (3) of this subsection are not required to submit an ~~annual summary.~~

~~(b) A generator who ships his hazardous waste~~ off-site must also include the information specified in §335.71 of this title (relating to Biennial Reporting). Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the requirements of §335.114 of this title (relating to Reporting Requirements).

Source: The provisions of this §335.9 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective February 4, 1994, 19 TexReg 509; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.71, (relating to Biennial Reporting); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.329, (relating to Records and Reports); 30 TAC §335.474, (relating to Source Reduction and Waste Minimization Plans); 30 TAC §335.476, (relating to Reports and Recordkeeping); 30 TAC §335.513, (relating to Documentation Required).

~~§ 335.10.~~ Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

(a) Except as provided in subsection (g) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste storage, processing, or disposal facility in Texas; a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311, and, if necessary, TNRCC-0311B is prepared;

(2) the generator is either an industrial generator that generates less than 100 kilograms of nonhazardous Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title;

(3) for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the consignment state's manifest, if provided, or a Texas state manifest if the consignment state does not provide a manifest, is prepared, unless the generator is identified in paragraph (2) of this section;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a manifest from the primary exporter's state if that state supplies the ~~manifest form and requires its use or a manifest~~

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shipping paper signed and dated to the generator; and

(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(c) If a facility receives hazardous waste or Class I waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class I waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class I waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:

(A) for bulk weight, variations greater than 10% in weight; and

(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

Source: The provisions of this §335.12 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope, and Applicability); 30 TAC §335.47, (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.223, (relating to Additional Permit Standards for Burners); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.412, (relating to General Requirements for Processing, Storage, or Disposal Facilities).

§ 335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

(a) The generator or primary exporter shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the generator or primary exporter.

(b) Generators or primary exporters who ship to other states, or import shipments from outside the United States through Texas to other states, or export hazardous waste to a foreign country, shall prepare a complete and correct waste shipment summary from the manifests. The waste shipment summary shall be prepared in a form provided or approved by the executive director and submitted to the Texas Natural Resource Conservation Commission on or before the 25th of each month for shipments originating during the previous month. The generator or primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. A generator or primary exporter required to comply with this subsection shall prepare and submit a waste shipment summary for only those months in which shipments were actually made. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.

(c) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

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~~(d) A generator must submit an exception report~~ to the commission if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. Primary exporters of hazardous waste must submit an exception report to the executive director as set forth in §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments). The exception report must be retained by the generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(f) The requirements of subsections (c) and (d) of this section do not apply to generators generating hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78(e)(1) or (2) of this title (relating to Conditionally Exempt Small Quantity Generators).

~~(g) Primary exporters of hazardous waste must~~ submit an annual report in accordance with the requirements set out in the regulations contained in 40 Code of Federal Regulations §262.56, which are in effect as of November 8, 1986.

Source: The provisions of this §335.13 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 4, 1994, 19 TexReg 509.

Cross References: This Section cited in 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.329, (relating to Records and Reports).

§ 335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste

(a) A transporter of hazardous waste or Class I ~~waste shall retain a copy of each manifest signed by the generator or, in the case of exports of~~ hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of the initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class I waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Source: The provisions of this §335.14 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §335.11, (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.411, (relating to General Requirements for Transporters).

§ 335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities

This section applies to owners and operators that ~~receive hazardous waste or Class 1 waste from off~~

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the designated facility is located and the appropriate regulatory agency of the state in which the shipment may have been delivered. If a state required to be notified under this section has not received interim or final authorization pursuant to the Resource Conservation and Recovery Act of the 1976, §3006, the generator shall notify the administrator that the manifest has not been returned.

Source: The provisions of this §335.75 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106.

§ 335.76. Additional Requirements Applicable to International Shipments

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986, provide otherwise, a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, which are in effect as of November 8, 1986, has been provided;

(2) the receiving country has consented to accept the hazardous waste;

(3) a copy of the EPA acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) the hazardous shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent; and

(5) the primary exporter complies with the manifest requirements of §335.10(a)-(d) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A) in lieu of the name, site address, and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(B) in lieu of the name, site address, and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(C) in special handling instructions and additional information, the primary exporter must identify the point of departure from the United States;

(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste): "and conforms to the terms of the attached EPA acknowledgment of consent";

(E) the primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in §335.12(c)(1) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) as the subsection applies to hazardous waste between the manifest and the

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shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;

(F) in lieu of the requirements of §335.10(a) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(i) renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with the regulations contained in 40 CFR §262.53(c), which are in effect as of November 8, 1986, and obtain an EPA acknowledgment of consent prior to delivery; or

(ii) instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(iii) instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;

(G) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(H) the primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United States customs official at the point the hazardous waste leaves the United States in accordance with §335.11(g) (4) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste).

(c) A primary exporter must submit an exception report to the executive director if:

(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the foreign consignee that the hazardous waste was received; or

(3) the waste was returned to the United States.

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for the manifest except that:

(1) in place of the generator's name, address, and EPA identification number, the name and address of the foreign generator and the importer's name, address, and EPA identification number must be used;

(2) in place of the generator's signature on the certification statement, the United States importer or his agent must sign and date the certification and obtain the signature of the initial transporter; and

(3) a person who imports hazardous waste must obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), which are in effect as of November 8, 1986.

(g) Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR

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§262.57, which are in effect as of November 8, 1986.

Source: The provisions of this §335.76 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §335.13, (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters).

§ 335.77. Farmers

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with this chapter for those wastes provided that he triple rinses each emptied pesticide container in accordance with § 335.41(f)(2)(C) of this title (relating to Purpose, Scope, and Applicability) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

Source: The provisions of this §335.77 adopted to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §335.41, (relating to Purpose, Scope, and Applicability); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability).

§ 335.78. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e)-(g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C-H and O of this chapter (relating to 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; Permitting 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; and Land Disposal Restrictions) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 (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) and the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) Hazardous waste that is not subject to regulation or that is subject only to §§335.62, 335.63, 335.70, and 335.71 of this title (relating to Hazardous Waste Determination; EPA Identification Numbers; Recordkeeping; and Annual Reporting) is not included in the quantity determinations of this section and Subchapters C-H and O of this chapter (relating to 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; Permitting 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; and Land Disposal Restrictions) and Chapter 305 of this title (relating to Consolidated Permits) and is not subject to any of the requirements of such subchapters or chapter. Hazardous waste that is subject to the requirements of §§335.24(d)-(f), 335.211-335.214, 335.221-335.226, and 335.241 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials; Recyclable Materials Used in a Manner Constituting Disposal; Hazardous Waste Burned for Energy Recovery; and Applicability) is included in the quantity determination of this section and is subject to the requirements of Subchapters C-H of this chapter (relating to 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; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 305 of this title (relating to Consolidated Permits).

(d) In determining the quantity of hazardous waste generated, a generator need not include:

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(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste which is generated or collected for the purpose of treatability studies;

(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C-H and O of this chapter (relating to 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; Permitting 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; and Land Disposal Restrictions) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedure 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) and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination).

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C-H and O of this chapter (relating to 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; Permitting Standards for Owners and Operators of Hazardous 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; and Land Disposal Restrictions) and 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) and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of his acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States is:

(A) permitted by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(B) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

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(D) permitted, licensed, or registered by a state to manage municipal or industrial solid waste: or

(E) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title (relating to Hazardous Waste Determination).

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulated at any time more than a total of 1,000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1,000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D-H and O of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting 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; and Land Disposal Restrictions) and 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) and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms;

(3) A conditionally exempt small quantity generator may either process or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(B) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

(D) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(E) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil and the mixture is going to recycling, the mixture is subject to Chapter 324 of this title (relating to Used Oil) and 40 Code of Federal Regulations Part 279.

Source: The provision of this §335.78 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective March 6, 1996, 21 TexReg 2400.

Cross References: This Section cited in 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.10, (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardo); 30 TAC §335.13, (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary

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§ 335.112. Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

(1) Subpart B—General Facility Standards (as amended through November 18, 1992, at 57 FedReg 54452);

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures, except 40 CFR §265.56(d);

(4) Subpart E—Manifest System, Recordkeeping and Reporting (as amended through January 29, 1992, at 57 FedReg 3492), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77;

(5) Subpart F—Groundwater Monitoring (as amended through December 23, 1991, at 56 FedReg 66369), except 40 CFR §265.90 and §265.94;

(6) Subpart G—Closure and Post-Closure (as amended through August 18, 1992, at 57 FedReg 37194); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H—Financial Requirements (as amended through September 16, 1992, at 57 FedReg 42832); except 40 CFR §265.142(a)(2); provided that the corporate guarantee for closure or for post-closure care, described in 40 CFR §265.143(e)(10) or §265.145(e)(11), respectively, may be provided only by a direct or higher-tier parent corporation of the owner or operator;

(8) Subpart I—Use and Management of Containers;

(9) Subpart J—Tank Systems (as amended through August 31, 1993, at 58 FedReg 46040);

(10) Subpart K—Surface Impoundments (as amended through August 18, 1992, at 57 FedReg 37194-37282);

(11) Subpart L—Waste Piles (as amended through January 29, 1992, at 57 FedReg 3493), except 40 CFR §265.253;

(12) Subpart M—Land Treatment, except 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N—Landfills (as amended through July 10, 1992, at 57 FedReg 30658), except 40 CFR §§265.301(f)-265.301(i), 265.314, and 265.315;

(14) Subpart O—Incinerators (as amended through February 21, 1991, at 56 FedReg 7208);

(15) Subpart P—Thermal Treatment (as amended through July 17, 1991, at 56 FedReg 32692);

(16) Subpart Q—Chemical, Physical, and Biological Treatment;

(17) Subpart R—Underground Injection;

(18) Subpart W—Drip Pads (as amended through December 24, 1992, at 57 FedReg 61492);

(19) Subpart AA—Air Emission Standards for Process Vents (as amended through April 26, 1991, at 56 FedReg 19290);

(20) Subpart BB—Air Emission Standards for Equipment Leaks (as amended through April 26, 1991, at 56 FedReg 19290);

(21) Subpart DD—Containment Buildings (as amended through August 18, 1992, at 57 FedReg 37194); and

(22) The following appendices contained in 40 CFR Part 265:

(A) Appendix I—Recordkeeping Instructions (as amended through March 24, 1994, at 59 FedReg 13891);

(B) Appendix III—EPA Interim Primary Drinking Water Standards;

(C) Appendix IV—Tests for Significance; and

(D) Appendix V—Examples of Potentially Incompatible Waste.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes:

(1) The term "regional administrator" is changed to the "executive director" of the Texas Natural Resource Conservation Commission or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B;

(2) The term "treatment" is changed to "processing";

(3) References the Resource Conservation and Recovery Act, to §3008(h) are changed to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action);

(4) References to 40 CFR §§260.10, 264.90, 264.101, 270.41, or 270.42, are changed to §335.1 of this title (relating to Definitions),

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§335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), §305.62 of this title (relating to Amendment), or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), respectively;

(5) References to 40 CFR, Part 264, Subpart F, are changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(6) References to 40 CFR, Part 265, Subpart F, are changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR, Part 265, Subpart F, except §265.90 and §265.94; and

(7) References to the EPA are changed to the Texas Natural Resource Conservation Commission.

(c) A copy of 40 CFR, Part 265 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

Source: The provisions of this §335.112 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective October 29, 1990, 15 TexReg 6017; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective July 16, 1991, 16 TexReg 3730; amended to be effective December 13, 1991, 16 TexReg 6936; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.1, (relating to Definitions); 30 TAC §335.5, (relating to Deed Recordation of Waste Disposal); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.111, (relating to Purpose, Scope, and Applicability); 30 TAC §335.115, (relating to Additional Reports); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.113. Reporting of Emergency Situations by Emergency Coordinator

If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, he must report his findings as follows.

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate local officials decide whether local areas should be evacuated.

(2) He must immediately notify the commission according to procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The report must include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and place of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health or the environment outside the facility.

Source: The provisions of this §335.113 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.94, (relating to Transfer Facility Requirements); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners).

§ 335.114. Reporting Requirements

(a) The owner or operator must prepare and submit to the executive director by January 25 of each year a single copy of an annual report which covers facility activities during the previous year and contains the following information:

(1) the EPA identification number, name, and address of the facility;

(2) the calendar year covered by the report;

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(3) the TWC hazardous waste code and a description and the quantity of each hazardous waste the facility received during the year;

(4) the method of processing, storage, or disposal for each hazardous waste;

(5) monitoring data under §335.117(a)(2)(B) and (C), and (b)(2) of this title (relating to Recordkeeping and Reporting) where required;

(6) the most recent closure cost estimate under the regulations contained in 40 Code of Federal Regulations, §265.142, which are in effect as of May 2, 1986, and §335.127 of this title (relating to Cost Estimate for Closure), and, for disposal facilities, the most recent post-closure cost estimate under the regulations contained in 40 Code of Federal Regulations, §265.144 which are in effect as of May 2, 1986;

(7) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(8) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(9) the certification signed by the owner or operator of the facility or his authorized representative.

(b) An owner of operator receiving waste from off-site sources shall also file a monthly summary in accordance with §335.15 of this title (related to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities). The annual report required by this section for such owners and operators need not contain the information required by subsection (a)(3) and (4) of this section if such information has already been submitted pursuant to §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

Source: The provisions of this §335.114 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.115, (relating to Additional Reports); 30 TAC §335.117, (relating to Recordkeeping and Reporting); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners).

§ 335.115. Additional Reports

In addition to submitting the annual report and waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and §335.114 of this title (relating to Reporting Requirements), the owner or operator must also report to the executive director:

~~(1) releases, fires, and explosions as specified~~ in 40 Code of Federal Regulations §265.56(j);

(2) groundwater contamination and monitoring data as specified in 40 Code of Federal Regulations §265.93 and §335.117 of this title (relating to Recordkeeping and Reporting);

(3) facility closure as specified in 40 Code of Federal Regulations §265.115; and

(4) as otherwise required by §335.112(a)(2) of this title (relating to Standards), which incorporates the requirements of 40 Code of Federal Regulations Part 265, Subparts AA and BB.

Source: The provisions of this §335.115 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners).

§ 335.116. Applicability of Groundwater Monitoring Requirements

(a) On November 19, 1981, the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as provided in subsection (c) of this section.

(b) Except as provided in subsections (c) and (d) of this section, the owner or operator must install, operate, and maintain a groundwater monitoring system which meets the requirements of 40 Code of Federal Regulations §265.91, and must comply with 40 Code of Federal Regulations §265.92 and §265.93, and §335.117 of this title (relating to Recordkeeping and Reporting). This groundwater monitoring program must be carried out during the active life of the facility, and for disposal facilities during the post-closure care period as well.

(c) All or part of the groundwater monitoring requirements of this subchapter may be waived if ~~the owner or operator can demonstrate that there~~

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~~Waste Discharges) throughout the active life of~~ the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) report the following groundwater monitoring information to the executive director:

(A) during the first year, when initial background concentrations are being established for the facility, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III ~~of 40 Code of Federal Regulations Part 265;~~

(B) quarterly, during the initial year of groundwater monitoring, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265. 92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 Code of Federal Regulations §265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with 40 Code of Federal Regulations §265.93(c)(1). During the active life of the facility, this information must be submitted as part of the annual report required under §335.114 of this title (relating to Reporting Requirements). In addition, concentration of the groundwater quality parameters listed in 40 Code of Federal Regulations §265.92(b)(2) shall be reported annually.

(C) as a part of the annual report required under §335.114 of this title (relating to Reporting Requirements), results of the evaluation of groundwater surface elevations under 40 Code of Federal Regulations §265.93(f), and a description of the response to that evaluation where applicable.

~~(b) If the groundwater is monitored to satisfy the~~ requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses and evaluations specified in the plan which satisfies the ~~requirements of 40 Code of Federal Regulations §265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and~~

(2) annually, until final closure of the facility, submit to the executive director a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. This report must be submitted as part of the annual report required under §335.114 of this title (relating to Reporting Requirements).

~~(c) The owner or operator shall submit, upon~~ request of the executive director, the following static information for each groundwater monitoring well:

(1) date of well construction;

(2) total depth of well (based on mean sea level);

(3) type of well (ex. trench lysimeter, piezometer, well cluster, multiple screen, pressure vacuum, lysimeter);

(4) latitude/longitude (based on United States geological survey topographic map);

(5) geologic age of aquifer sampled;

(6) aquifer name/geologic formation and age.

(d) The owner or operator shall submit, upon request of the executive director, the following information on each sampling event for each groundwater monitoring well sampled:

(1) date of observation;

(2) depth to water level (based upon mean sea level);

(3) sample collection method (i.e. pumped well, bailer, probe, air-lift pump, jetted, peristaltic pump, centrifugal pump, or pitcher pump);

(4) depth to the top of the sample interval which is measured in the number of feet below the land surface datum (LSD);

(5) depth to the bottom of the sample interval which is measured in feet below the LSD.

Source: The provisions of this §335.117 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.115, (relating to Additional Reports); 30 TAC §335.116, (relating to Applicability of Groundwater Monitoring Requirements); ~~30 TAC §335.152, (relating to Standards).~~

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(c) A facility owner or operator who has fully complied with the requirements for interim status, as defined in the Resource Conservation and Recovery Act, §3005(e), and §335.2 and §335.43 of this title (relating to Permit Required), must comply with the requirements of Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) in lieu of the requirements of this subchapter, until final administrative disposition of his permit application is made, except as provided under Title 40, Code of Federal Regulations, Part 264, Subpart S.

Source: The provisions of §335.151 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective February 22, 1994, 19 TexReg 969.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.152. Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

(1) Subpart B—General Facility Standards (as amended through November 18, 1992, at 57 FedReg 54452); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures, except 40 CFR §264.56(d);

(4) Subpart E—Manifest System, Recordkeeping, and Reporting (as amended through January 29, 1992, at 57 FedReg 3462), except 40 CFR §§264.71, 264.72, 264.75, 264.76 and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G—Closure and Post-Closure (as amended through August 18, 1992, at 57 FedReg 37194); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H—Financial Requirements (as amended through June 10, 1994, in 59 FedReg 29958); except 40 CFR §264.142(a)(2); and subject to the limitations set forth in this section:

(A) Facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a) and 264.147(b);

(B) Facilities which qualify for the corporate guarantee for liability are additionally subject to 40 CFR §264.147(g)(2) and §264.151(h)(2); and

(C) The corporate guarantee for closure or for post-closure care, described in 40 CFR §264.143(f)(10) or §264.145(f)(11), respectively, may be provided only by a direct or higher-tier parent corporation of the owner or operator;

(7) Subpart I—Use and Management of Containers;

(8) Subpart J—Tank Systems (as amended through August 31, 1993, at 58 FedReg 46040);

(9) Subpart K—Surface Impoundments (as amended and adopted through January 29, 1992, at 57 FedReg 3462), except 40 CFR §264.221 and §264.228:

(A) References to 40 CFR 264.221 are changed to §335.168 of this title (relating to Design and Operating Requirements);

(B) References to 40 CFR 264.228 are changed to §335.169 of this title (relating to Closure and Post-Closure Care);

(10) Subpart L—Waste Piles (as amended and adopted through January 29, 1992, at 57 FedReg 3462), except 40 CFR §264.251;

(11) Subpart M—Land Treatment, except 40 CFR §264.273 and §264.280;

(12) Subpart N—Landfills (as amended through November 18, 1992, at 57 FedReg 54452), except 40 CFR §§264.301, 264.310, 264.314 and 264.315;

(13) Subpart O—Incinerators (as amended through February 21, 1991, at 54 FedReg 7207);

(14) Subpart S—Corrective Action for Solid Waste Management Units (as amended through February 16, 1993, at 58 FedReg 8683);

(15) Subpart W—Drip Pads (as amended through December 24, 1992, at 57 FedReg 61492);

(16) Subpart X—Miscellaneous Units;

(17) Subpart AA—Air Emission Standards for Process Vents (as amended through April 26, 1991, at 56 FedReg 19290);

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effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit); 30 TAC §305.64, (relating to Transfer of Permits); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §331.3, (relating to Injection Prohibited); 30 TAC §335.1, (relating to Definitions); 30 TAC §335.167, (relating to Corrective Action for Solid Waste Management Units); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.153. Reporting of Emergency Situations by Emergency Coordinator

If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment outside the facility, he must report his findings as follows.

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate local officials decide whether local areas should be evacuated.

(2) He must immediately notify the commission according to procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The report must include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and place of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health, or the environment, outside the facility.

Source: The provisions of this §335.153 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 335.154. Reporting Requirements for Owners and Operators

(a) The owner or operator must prepare and submit to the executive director by January 25 of each year an annual report which covers facility activities during the previous calendar year and which contains the following information:

(1) the EPA identification number, name, and address of the facility;

(2) the calendar year covered by the report;

(3) the TWC hazardous waste code and description and the quantity of each hazardous waste the facility received during the year;

(4) the method of storage, processing, or disposal for each hazardous waste;

(5) the most recent closure cost estimate under the regulations contained in 40 Code of Federal Regulations, §264.142 which are in effect as of May 2, 1986, and §335.178 of this title (relating to Cost Estimate For Closure) and, for disposal facilities, the most recent post-closure cost estimate under the regulations contained in 40 Code of Federal Regulations, §264.144 which are in effect as of May 2, 1986;

(6) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(8) The certification signed by the owner or operator of the facility or his authorized representative.

(b) An owner or operator receiving hazardous waste from off-site shall file a monthly summary in accordance with §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposable Facilities). The annual report required by this section by such owners or operators need not included the information required by subsection (a)(3) and (4) of this section if such information has already been submitted pursuant to §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

Source: The provisions of this §335.154 adopted to be effective May 28,1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.146, (relating to Reporting); 30 TAC §335.47, (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule); 30 TAC §335.155, (relating to Additional Reports); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

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§ 335.155. Additional Reports

In addition to submitting the annual report and waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators), the owner or operator must also report to the executive director:

~~(1) releases, fires, and explosions as specified~~ in 40 Code of Federal Regulations §264.56(j);

(2) facility closure as specified in 40 Code of Federal Regulations §264.115;

(3) as otherwise required by 40 Code of Federal Regulations Part 264, Subparts F, K-N, X, AA, and BB.

Source: The provisions of this §335.155 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 335.156. Applicability of Groundwater Monitoring and Response

(a) Except as provided in subsection (b) of this section, the rules pertaining to groundwater monitoring and response apply to owners and operators of facilities that process, store, or dispose of hazardous waste.

(1) The owner or operator must satisfy those requirements of paragraph (2) of this subsection for all wastes (or constituents thereof) contained in any such waste management unit at the facility, regardless of the time at which waste was placed in the units.

(2) All solid waste management units must comply with the requirements in §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, land treatment unit, or landfill that receives hazardous waste after July 26, 1982, (hereinafter referred to as a regulated unit) must comply with the requirements of §§335.157-335.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; ~~Compliance Monitoring Program; and Corrective Action Program); in lieu of §335.167 of this~~ title (relating to Corrective Action for Solid Waste Management Units for purposes of detecting, characterizing, and responding to release to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) apply to regulated units.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this section and §§335.157-335.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) if:

(1) he is exempted under 40 Code of Federal Regulations §264.1;

(2) he operates a unit which the commission finds;

(A) is an engineered structure;

(B) does not receive or contain liquid waste or waste containing free liquids;

(C) is designed and operated to exclude liquid, precipitation, and other run-on and runoff;

(D) has both inner and outer layer of containment enclosing the waste;

(E) has a leak detection system built into each containment layer for which continuing operation and maintenance will be provided during the active life of the unit and the closure and post-closure care periods; and

(F) to a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(3) the commission finds, pursuant to 40 Code of Federal Regulations §264.280(d), that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above backgrounds levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 40 Code of Federal Regulations §264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of ~~the unit. An exemption under this paragraph can~~

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§ 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 the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon), §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 §275.78 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.

Source: The provisions of this §335.206 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective April 23, 1991, 16 TexReg 2053.

SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

Cross References: This Subchapter cited in 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.23, (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.43, (relating to Permit Required).

RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

§ 335.211. Applicability

(a) The regulations of §§335.211-335.214 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal) apply to recyclable materials that are applied to or placed on the land:

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

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

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

Source: The provisions of this §335.211 adopted to be effective May 28, 1986, 11 TexReg 2348; amended to be effective August 30, 1988, 13 TexReg 4072; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.211, (relating to Applicability); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal).

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

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

Source: The provisions of this §335.212 adopted to be effective May 28, 1986, 11 TexReg 2348.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.211, (relating to Applicability).

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

Owners or operators of facilities that store recyclable materials that are to be used in a manner

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that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), 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), Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

Source: The provisions of this §335.213 adopted to be effective May 28, 1986, 11 TexReg 2348.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.211, (relating to Applicability).

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

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter O of this chapter (relating to Land Disposal Restrictions), Chapter 305 of this title (relating to Consolidated Permits), 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), Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §335.211(b) of this title (relating to Applicability).

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

Source: The provisions of this §335.214 adopted to be effective May 28, 1986, 11 TexReg 2348; amended to be effective March 1, 1996, 21 TexReg 1425.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.211, (relating to Applicability).

HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§ 335.221. Applicability and Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, September 5, 1991, June 22, 1992, August 25, 1992, September 30, 1992, July 20, 1993, November 9, 1993, and September 19, 1994, issues of the Federal Register (see 56 FedReg 7239, 56 FedReg 32688, 56 FedReg 42504, 56 FedReg 43874, 57 FedReg 27880, 57 FedReg 28558, 57 FedReg 44999, 58 FedReg 38816, 58 FedReg 59598, and 59 FedReg 48042-48043):

(1) §266.100—Applicability, except §266.100(b);

(2) §266.102(a)—Permit Standards for Burners—Applicability, excepting those portions of ~~§266.102(a) containing references to §§264.56(d),~~

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director or by his designated representative. Compliance determinations may be made based on results of monitoring with a certified monitor.

Source: The provisions of this §335.228 adopted to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities); 30 TAC §335.229, (relating to Operating Requirements for Commercial Hazardous Waste Combustion Facilities).

§ 335.229. Operating Requirements for Commercial Hazardous Waste Combustion Facilities

The owner or operator of commercial combustion facilities subject to the requirements of §§335.226, 111.125, or 335.228 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities; Testing Requirements; and Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities), respectively, shall meet the requirements of §111.129 of this title (relating to Operating Requirements).

Source: The provisions of this §335.229 adopted to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

§ 335.241. Applicability and Requirements

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

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

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

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

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

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

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

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

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

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), Chapter 305 of this title (relating to Consolidated Permits), 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 title (relating to Procedures After Final Decision).

Source: The provisions of this §335.241 adopted to be effective May 28, 1986, 11 TexReg 2349.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

SPENT LEAD-ACID BATTERIES BEING RECLAIMED

§ 335.251. Applicability and Requirements

(a) The regulations of this section apply to persons who reclaim spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them, are not subject to regulation under this chapter, Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Intro-

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OFFICIAL

Texas Administrative Code

Title 30 Environmental Quality

1994–Part One

Amendments effective through
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(D) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency, that:

(i) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

~~(E) At any time after the effective date of the~~ requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14-270.26. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment which is filed after January 1, 1986, which is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such a release.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) copies of any relevant land use plans, adopted pursuant to the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

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~~Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).~~

§ 305.50. Additional Requirements for an Application for a Solid Waste Permit

~~Unless otherwise stated, an application for a~~ permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) Six copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. Also to be submitted are listings of evidence of noncompliances concerning solid waste management by the permit holder in the preceding five years at the permitted site, listings of evidence of noncompliances concerning solid waste management in the preceding five years at any site owned, operated, or controlled by the applicant in the State of Texas, a summary of the attempts of the permit holder to correct the environmental violations, and an indication of whether the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by the Texas Solid Waste Disposal Act or by any rule of the commission. For purposes of this subsection, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13-270.26, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), (4), (b), and (c), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Such financial information may include, but is not limited to, the following:

(i) current and two previous years audited financial statements prepared in accordance with generally accepted auditing standards, including an opinion as to the fairness of the financial statements and accompanying notes;

(ii) current and two previous years Form 10-K annual reports filed with the Securities and Exchange Commission;

(iii) relevant information concerning investors and stockholders; and

(iv) information required by Code of Federal Regulations, Title 40, Part 264, Subpart H.

(C) If any of the information required to be disclosed under subparagraph (B) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

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OFFICIAL

Texas Administrative Code

Title 30 Environmental Quality

1994–Part Two

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~~(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title (relating to Permit Required).~~

(d) Persons generating more than 100 kilograms but less than 1,000 kilograms of hazardous municipal waste in any calendar month shall notify the executive director of such activity on forms provided by the executive director. Such person shall also submit to the executive director upon request such information as may be reasonably required to enable the executive director to determine whether the storage, processing, or disposal of such waste is compliant with the terms of these sections. Notifications submitted pursuant to this section shall be in addition to any information provided on any permit application required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Shipping and 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 Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). ~~Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of any such change or of becoming aware of such new information provide written notice to the executive director of any such changes or additional information to that reported previously.~~

(e) Except for conditionally exempt small quantity generators who only transport their own hazardous waste, any person who transports hazardous waste or Class I waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

~~(f) Upon written request of the executive director,~~ any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results ~~of the analysis to the executive director.~~

~~(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 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.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) 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 must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 Code of Federal Regulations (CFR) §266.108 must provide a one-time signed, written notification to the United States Environmental Protection Agency 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).

Source: The provisions of this §335.6 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, ~~1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13~~

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~~of hazardous waste and Class I nonhazardous~~ waste was generated during the year.

(4) Generators who are regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) and also meet the requirements of paragraph (3) of this subsection are not required to submit an ~~annual summary.~~

(b) A generator who ships his hazardous waste off-site must also include the information specified in §335.71 of this title (relating to Annual Reporting). Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the requirements of §335.114 of this title (relating to Reporting Requirements).

Source: The provisions of this §335.9 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 27, 1992, 17 TexReg 8010.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.329, (relating to Records and Reports); 30 TAC §335.513, (relating to Documentation Required).

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

(a) Except as provided in subsection (g) of this section, no generator of hazardous or Class I waste consigned to an off-site solid waste storage facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class I waste unless:

(1) for generators of Class I waste and generators of municipal hazardous waste shipping municipal hazardous waste which is part of a total quantity of municipal hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste storage, processing, or disposal facility in Texas, a Texas Water Commission (TWC) manifest on Form TWC-0311, and, if necessary, TWC-0311 is prepared;

~~(2) the generator is a conditionally exempt~~ small quantity generator (CESQG) of municipal hazardous waste;

(3) for generators of hazardous waste or Class I waste generated in Texas for consignment to another state the consignment state's manifest, if provided, or a TWC manifest if the consignment state does not provide a manifest, is prepared;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a manifest from the primary exporter's state if that state supplies the manifest form and requires its use or a manifest from any source if the primary exporter's state does not supply the manifest form; and

(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternative facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Special Handling Instructions and Additional Information." If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste;

(6) for shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(b) The manifest shall contain the following information.

(1) The manifest shall contain the generator's United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is nonhazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.

(2) The manifest shall contain the total number ~~of pages used to complete the manifest, plus the~~

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~~number of continuation sheets, if any (page 1 of ____).~~

(3) The manifest shall contain the name, mailing address, and telephone number of the generator.

(4) The manifest shall contain the telephone number where an authority agent of the generator ~~may be reached in the event of an emergency.~~

(5) The manifest shall contain the generator's Texas Water Commission (TWC) registration and/or permit number. Conditionally exempt small quantity generators shipping hazardous waste regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) may utilize the letters "CESQG" for their TWC generator registration number unless they have previously been assigned a TWC registration number.

~~(6) The manifest shall contain the first transporter's company name.~~

(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous or the transporter is a conditionally exempt small quantity generator ~~transporting only his own hazardous waste.~~

(8) The manifest shall contain the first transporter's state registration number. Conditionally exempt small quantity generators of hazardous waste are instructed to use the letters "CESQG" as the TWC state transporter's registration number when transporting their own hazardous waste unless they have previously been assigned a TWC registration number.

~~(9) The manifest shall contain a telephone~~ number where an authorized agent of first transporter may be reached in the event of an emergency.

(10) The manifest shall contain the second transporter's company name.

(11) The manifest shall contain the second transporter's 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous.

(12) The manifest shall contain the second transporter's state registration number.

(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an ~~emergency.~~

~~(14) The manifest shall contain the company~~ name and site address of the facilities designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof.

(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is nonhazardous.

(16) The manifest shall contain the Texas Water Commission's or Texas Department of Health's state storage, processing, or disposal facility registration and/or permit number.

(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations §172.201(a)(1)), the Texas Water Commission has added a hazardous materials (HM) column on the manifest before the United States Department of Transportation description. When a waste shipment consists of both federally regulated materials and state regulated wastes, the hazardous materials (HM) column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous ~~materials.~~

(18) The manifest shall contain the United States Department of Transportation proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 Code of Federal Regulations, Parts 171-177. If the shipment contains nonhazardous waste solely regulated by the Texas Water Commission, then the Texas Water Commission waste classification code description should be

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used. If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the continuation sheet.

(19) The manifest shall contain the number of containers for each waste and the appropriate abbreviation from Table 1 in §335.30 of this title (relating to Appendix I) for the type of container.

(20) The manifest shall contain the total quantity of each waste described on each line.

(21) The manifest shall contain the unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 Code of Federal Regulations, Parts 264 or 265.

(22) The manifest shall contain the Texas Water Commission waste classification code assigned to the waste by the generator.

(23) The manifest shall contain a certification by the generator stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations. if I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; or, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

(24) If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space provided below the word "highway." If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word "highway."

(c) The manifest shall consist of at least the number of copies which will provide the generator, each transporter, the owner or operator of the storage, processing, or disposal facility and in the case of hazardous waste exports, the United States customs official, with one copy each for their records and another copy to be returned to the generator.

(d) At the time of waste transfer, the generator shall:

(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §335.123(a) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste); and

(4) give the transporter the remaining copies of the manifest.

(e) For shipments of hazardous waste or Class I waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) For rail shipments of hazardous waste or Class I waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) the next nonrail transporter, if any;

(2) the designated facility if transported solely by rail; or

(3) the last rail transporter to handle the waste in the United States if exported by rail.

(g) No manifest is required for the shipment of Class I waste which is not hazardous waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that 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 another source with respect to other plants or operations owned by the same person.

(h) Conditionally exempt small quantity generators (CESQGs) of municipal hazardous waste who choose to manifest their hazardous waste may do

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rector a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

Source: The provisions of this §335.12 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope, and Applicability); 30 TAC §335.47, (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.223, (relating to Additional Permit Standards for Burners); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.412, (relating to General Requirements for Processing, Storage, or Disposal Facilities).

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

(a) The generator or primary exporter shall retain a copy of each manifest required by §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) for a minimum of three years from the date of shipment by the generator or primary exporter or until the generator or primary exporter receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) Generators or primary exporters who ship to other states, or import shipments from outside the United States through Texas to other states, or export hazardous waste to a foreign country, shall prepare a shipment summary from the manifests, summarizing the quantity and classification of each waste shipment itemized by manifest document number. Such shipment summary shall be prepared on forms provided or approved by the executive director and submitted to the Texas Water Commission on or before the 25th day of each month for shipments originating during the previous month. A generator or primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. A generator or primary exporter required to comply with this subsection shall prepare and submit a shipment summary for only those months in which he actually made shipments. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.

(c) A generator of greater than 1,000 kilograms of hazardous waste in a calendar month or a generator of Class I waste who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class I waste.

(d) A generator of greater than 1,000 kilograms of hazardous waste in a calendar month or a generator of Class I waste must submit an exception report to the commission if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. Primary exporters of hazardous waste must submit an exception report to the executive director as set forth in §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments). The exception report must be retained by the generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class I waste and the results of those efforts.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(f) The requirements of subsections (c) and (d) of this section do not apply to generators generating

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hazardous waste or Class I waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78(e)(1) or (2) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(g) A generator of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the executive director.

Source: The provisions of this §335.13 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.329, (relating to Records and Reports).

§ 335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste

(a) A transporter of hazardous waste or Class I waste shall retain a copy of each manifest signed by the generator or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of the initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class I waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Source: The provisions of this §335.14 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §335.11, (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.411, (relating to General Requirements for Transporters).

§ 335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities

This section does not apply to owners and operators that store, process, or dispose of hazardous waste or Class I waste on-site and do not receive any Class I waste from off-site sources.

(1) The owner or operator of the storage, processing, or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate.

(2) Except as provided in paragraph (6) of this section, the owner or operator shall prepare a monthly summary from his copy of all manifests received during the month (in those cases where a manifest is required), summarizing the quantity, character, transporter identity, and the method of storage, processing, and disposal of each hazardous waste or Class I waste shipment received, itemized by manifest document number.

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cyclable Materials), rather than under the provisions governing recyclable materials utilized for precious metal recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management-General Provisions, and Standards Applicable to Generators of Hazardous Waste), respectively. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing. The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management-General Provisions; and Standards Applicable to Generators of Hazardous Waste), respectively, is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

(2) If the person is accumulating the recyclable material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of 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 the 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 title (relating to Procedures After Final Decision). The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reason for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

Source: The provisions of this §335.23 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §335.22, (relating to Additional Regulation of Certain Hazardous Waste Recyclable Activities on a Case-By-Case Basis).

§ 335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d)-(f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(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

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§ 335.71. Annual Reporting

(a) Any generator or primary exporter who ships hazardous waste off site shall prepare and submit a single copy of an annual report to the executive director by January 25 of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

(1) the Environmental Protection Agency (EPA) identification number, name, and address of the generator;

(2) the calendar year covered by the report;

(3) the EPA identification number, TWC registration number, name, and address for each off site processing, storage, or disposal facility within the United States to which waste was shipped during the year;

(4) the name and EPA identification number and TWC registration number of each transporter used during the reporting year for shipments to a processing, storage, or disposal facilities within the United States;

(5) the TWC hazardous waste code and a description, EPA hazardous waste number from 40 Code of Federal Regulations, Part 261, Subpart C or D, United States Department of Transportation (DOT) hazard class, and quantity of each hazardous waste shipped off-site for shipments to a processing, storage, or disposal facility within the United States. This information must be listed by EPA identification number of each off-site facility to which waste was shipped;

(6) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(8) the certification signed by the generator or his or her authorized representative.

(b) Any generator who processes, stores, or disposes of hazardous waste on site must submit a report in accordance with the provisions of § 335.114 of this title (relating to Reporting Requirements) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators).

(c) Primary exporters of hazardous waste must submit an annual report in accordance with the requirements set out in the regulations contained in 40 Code of Federal Regulations, §262.56 which are in effect as of November 8, 1986.

Source: The provisions of this §335.71 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 2515.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

§ 335.73. Additional Reporting

The executive director may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 Code of Federal Regulations Part 261, Subparts C and D.

Source: The provisions of this §335.73 adopted to be effective May 28, 1986, 11 TexReg 2345.

Cross References: This Section cited in 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month).

§ 335.74. Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month

A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is exempt from the recordkeeping and reporting requirements of this subchapter, except for §335.70(a) and (c) of this title (relating to Recordkeeping); and §335.73 of this title (relating to Additional Reporting); and §335.13(a) and (g) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste and Primary Exporters of Hazardous Waste). Such generators are subject to the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).

Source: The provision of this §335.74 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 23, 1993, 18 TexReg 8218.

§ 335.75. Notification Requirements for Interstate Shipments

In the case of interstate shipments of hazardous waste for which a manifest has not been returned within 45 days of acceptance of the waste by the initial transporter, the generator shall notify the appropriate regulatory agency of the state in which the designated facility is located and the appropri-

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