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RCRA PERMITS PROGRAM

July 23, 2008

Ms. Alima Patterson
USEPA Region 6
1445 Ross Avenue, Suite 1200
Mail Code: 6PDO
Dallas, Texas 75202-2733

Re: Texas Attorney General Statement for RCRA Clusters XI-XV

Dear Ms. Patterson:

Enclosed in this letter, please find the executed Texas Attorney General's Statement for final authorization of the Texas Commission on Environmental Quality's hazardous waste program for RCRA Clusters XI-XV.

If you have any questions, please do not hesitate to call me at (512) 465-4041.

Sincerely,

Mary Smith
Assistant Attorney General
Natural Resources Division

Enclosure

cc: Ms. Suzanne Smith, USEPA Region 6, Mail Code: 6RCM
Mr. Guy Henry, TCEQ, via email
Ms. Amie Dutta Richardson, TCEQ, via email
Ms. Susan White, TCEQ, via email

**TEXAS ATTORNEY GENERAL'S STATEMENT FOR
FINAL AUTHORIZATION FOR RCRA CLUSTERS XI-XV**

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I. GENERAL INFORMATION

A. Certification

I certify, on behalf of and pursuant to the authority of the Attorney General of the State of Texas and in accordance with § 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6901 *et seq.*), and 40 C.F.R. (CFR) Part 271, that in my opinion, except as otherwise noted below, the laws of the State of Texas provide adequate authority to carry out the hazardous waste program set forth in the Program Description submitted by the Texas Commission on Environmental Quality on July 31, 2007, and to meet the requirements of 40 CFR, Part 271, Subpart A.

B. Authorization History

On December 26, 1984, Texas received authorization of its hazardous waste program under the Resource Conservation and Recovery Act (42 U.S.C. § 6904 *et seq.*) (RCRA). Since the original authorization, Texas has submitted and EPA has approved the following revisions to the Texas program: Non-HSWA Clusters I and II (effective February 17, 1987); Non-HSWA Cluster III and parts of Non-HSWA Cluster IV (effective March 15, 1990); HSWA Cluster I (effective July 23, 1990); TCLP (effective October 21, 1991); Non-HSWA Cluster IV (effective December 4, 1992); Non-HSWA Clusters V and VI, HSWA Cluster II, and RCRA Cluster I (effective June 27, 1994); RCRA Clusters II, III, and IV (effective November 26, 1997); RCRA Cluster V (effective October 18, 1999); RCRA Cluster VI (effective September 11, 2000); and RCRA Clusters VII through X (effective June 14, 2005).

C. Scope and Coverage

The TCEQ has adopted rules to implement the mandatory, nondiscretionary portions of EPA's revisions to the federal hazardous waste program made from July 10, 2000, through June 16, 2005. This statement covers RCRA Revision Checklists 188, 189, 190, 192A, 192B, 193, 194, 195, 196, 198, 199, 200, 202, 206, and 207.

D. Authorities

Statutes relied on in previously approved authorization applications have not been amended, modified or revised by statute in a way that diminishes or interferes with the authority to carry out the previously authorized hazardous waste program to meet the requirements of 40 CFR, Part 271, Subpart A. With the exception noted below, judicial interpretations of statutes relied on in previously approved authorization applications have not diminished or interfered with the authority to carry out the previously authorized hazardous waste program to meet the requirements of 40 CFR, Part 271, Subpart A.

A Texas court of appeals decision has limited the scope of Texas's statutory definition of hazardous waste. Chapter 361 of the Texas Health & Safety Code (Code) authorizes TCEQ to make rules that regulate "hazardous waste." In *Ex parte Elliott*, 973 S.W.2d 737, 742 (Tex. App. - Austin 1998, pet. ref'd), the Court held that the Code's hazardous waste definition only includes wastes that EPA had listed as of July 30, 1991. If this decision is followed, TCEQ's program does not fully regulate hazardous wastes that EPA has listed after July 30, 1991. However, this is mitigated because TCEQ has the authority to regulate these wastes as Class I industrial wastes, and some of TCEQ's hazardous waste rules also apply to Class I industrial wastes.

II. RCRA CLUSTER XI

A. Hazardous Air Pollutant Standards; Technical Corrections RCRA Revision Checklist 188 - Non-HSWA

Amendments to the Comparable/Syngas Fuel Exclusion. 40 CFR § 261.38 excludes wastes that meet certain comparable/syngas fuel requirements from regulation as a solid waste. The exclusion only applies if the wastes are burned in accordance with the rule. In the July 10, 2000, *Federal Register*, EPA amended the rule to add another acceptable means of burning the waste. 30 Tex. Admin. Code (TAC) § 335.1(133) is the definition of solid waste in the Texas rules. Section 335.1(133)(A)(iv) incorporates by reference the 40 CFR § 261.38 exclusion through the July 10, 2000, *Federal Register* amendment.

Amendments to Standards for Incinerators. Subpart O of 40 CFR, Part 264 sets forth standards for hazardous waste incinerators. 40 CFR § 264.340 states that an incinerator owner or operator who demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR, Part 63 is exempt from all but several of the Subpart O standards. In the July 3, 2001, *Federal Register*, EPA amended § 264.340 to add a Subpart O standard that incinerators in compliance with MACT standards still must meet. 30 TAC § 335.152(a)(13) incorporates by reference 40 CFR § 264.340 as amended through the July 3, 2001, *Federal Register*.

Amendments to Permit Modification at the Request of the Permittee. 40 CFR § 270.42(j)(1) allowed facility owners and operators to apply for a permit modification if they were in compliance with 40 CFR § 63.1210(b) and (c). On October 11, 2000, a federal appellate court vacated relevant portions of 40 CFR § 63.1210. Therefore, EPA amended § 270.42 to state that only owners and operators who were already in compliance with § 63.1210(b) and (c) before the federal appellate court decision were eligible to apply for a RCRA permit modification. 30 TAC § 305.69(i)(1) is the parallel provision in the TCEQ rules. It is amended to clarify that permit modifications are available only to those in compliance with 40 CFR § 63.1210(b) and (c) before October 11, 2000. Although the TCEQ references 40 CFR § 63.1210(b) and (c) as amended through July 3, 2001 – the EPA rule references the provision as amended through July 1, 2000 – there have been no amendments to this provision since July 1, 2000, and therefore the difference has no legal significance.

B. Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes
RCRA Revision Checklist 189 - HSWA Provision

Amendments to Lists of Hazardous Wastes. On May 7, 2001, EPA added two new wastes to the lists of hazardous wastes in 40 CFR § 261.32, in Subpart D of Part 261. 30 TAC § 335.204(2) incorporates all of 40 CFR, Part 261, Subpart D, as amended through February 24, 2005, by reference.

Amendments to Appendices VII and VIII of Part 261. Appendices VII and VIII of Part 261 also contain a list of hazardous wastes. EPA also amended these appendices to include the two new wastes on May 7, 2001. 30 TAC § 335.29(2) incorporates Appendix VII of Part 261 by reference as amended through February 24, 2005; § 335.29(3) incorporates Appendix VIII of Part 261 by reference as amended through February 24, 2005.

Amendments to Subpart C of Part 268, Prohibitions on Land Disposal. In its May 7, 2001, rule-making, the EPA also amended 40 CFR § 268.33, in Subpart C of Part 268, to add specific provisions regarding land disposal of the two newly listed wastes. 30 TAC § 335.431(c)(1) adopts 40 CFR, Part 268, as amended through February 24, 2005, and incorporates it by reference, excepting certain inapplicable sections listed in § 335.431(c)(2).

Amendments to Subpart D of Part 268, Treatment Standards. In the May 7, 2001, rule-making, the EPA also amended treatment standards in the table of 40 CFR § 268.40 to add the newly listed wastes. 30 TAC § 335.431(c)(1) adopts 40 CFR, Part 268, as amended through February 24, 2005, and incorporates it by reference, excepting certain inapplicable sections listed in § 335.431(c)(2).

C. Land Disposal Restrictions Phase IV - Deferral for PCBs in Soil
RCRA Revision Checklist 190 - HSWA Provision

Amendments to Subpart C of Part 268, Prohibitions on Land Disposal – Soils Exhibiting the Toxicity Characteristic for Metals and Containing PCBs. 40 CFR § 268.32(a) generally disallows the land disposal of any volume of soil exhibiting the toxicity requirement solely because it contains metals and PCBs. In its December 26, 2000, rule-making, the EPA amended 40 CFR § 268.32 to allow land disposal if this soil meets the standards set forth in 40 CFR § 268.32(b). 30 TAC § 335.431(c)(1) adopts 40 CFR, Part 268, as amended through February 24, 2005, and incorporates it by reference, excepting certain inapplicable sections listed in § 335.431(c)(2).

Amendments to Subpart D of Part 268, Treatment Standards – Universal Treatment Standards Table. The December 26, 2000, rule-making added a footnote to the universal treatment standards table at 40 CFR § 268.48(a). The TCEQ's rules incorporate this addition to the table by reference at 30 TAC § 335.431, which incorporates all of 40 CFR, Part 268 (except for certain sections inapplicable here) by reference, including all amendments through February 24, 2005.

Amendments to Subpart D of Part 268. Treatment Standards – Alternative DLR Treatment Standards for Contaminated Soil. The December 26, 2000, rule-making amended 40 CFR § 268.49(d) by adding a new sentence regarding PCBs in soil that exhibit the toxicity characteristic solely because of metals. The TCEQ's rules incorporate this revision to 40 CFR § 268.49(d) by reference through this amendment at 30 TAC § 335.431 by incorporating all of 40 CFR, Part 268 (except for certain sections inapplicable here) by reference, including all amendments through February 24, 2005.

Amendments to Appendix III to Part 268. The December 26, 2000, rule-making amended Appendix III of Part 268 to add a list of halogenated organic compounds regulated under 40 CFR § 268.32. The TCEQ's rules incorporate this addition to the appendix by reference at 30 TAC § 335.431, which incorporates all of 40 CFR, Part 268 (except for certain sections inapplicable here) by reference, including all amendments through February 24, 2005.

**D. Mixture and Derived-From Rules Revision; Land Disposal Restrictions Correction
RCRA Revision Checklist 192A and 192B - HSWA/Non-HSWA Provision**

Mixture and Derived-From Rules Revision. The May 16, 2001, amendment of 40 CFR § 261.3 expanded the exclusion from the definition of hazardous waste for mixtures or derivatives of wastes listed solely for their ignitability, corrosivity, or reactivity characteristic. TCEQ's rules define "hazardous waste" as any solid waste or combination of solid waste identified or listed by the administrator of the EPA as a hazardous waste pursuant to RCRA. 30 TAC § 335.1(64). Similarly, 30 TAC § 335.1(62) defines "industrial hazardous waste" as any industrial solid waste or combination of industrial solid wastes identified or listed by the administrator of the EPA as hazardous in accordance with RCRA. It further notes that the characteristics of hazardous waste and the listed wastes appear in 40 CFR, Part 261. Because the definition of "hazardous waste" and "industrial hazardous waste" both defer to Part 261's definition, these wastes are also excluded as hazardous waste in TCEQ's program.

Land Disposal Restriction Correction. The June 8, 2000, RCRA rule revision inadvertently removed the entry for hazardous waste code U048. EPA's May 16, 2001, amendment placed it back in 40 CFR § 268.3, Appendix VII, Table 1. 30 TAC § 335.431(c)(3) adopts Appendix VII by reference, through November 20, 2001.

**E. Change of Official EPA Mailing Address
RCRA Revision Checklist 193 - Non-HSWA**

EPA Change of Address. EPA relocated the majority of its headquarters in Washington, D.C., and amended its RCRA rules to reflect the change at 40 CFR § 260.11. 30 TAC § 335.31 incorporates 40 CFR § 260.11 by reference through this amendment.

III. RCRA CLUSTER XII

A. Mixture and Derived-From Rules Revision II RCRA Revision Checklist 194 - HSWA/Non-HSWA

Mixture and Derived-From Rules Revision II. On October 3, 2001, EPA amended 40 CFR § 261.4(g)(4) so that mixtures of certain excluded wastes (solid wastes excluded under 40 CFR § 261.4(b)(7)), and listed hazardous wastes that are listed solely because they exhibit a characteristic of ignitability, corrosivity, or reactivity, are exempt from regulation as a hazardous waste once the characteristic has been removed. TCEQ's rules define hazardous waste as any solid waste or combination of solid waste identified or listed by the administrator of the EPA as a hazardous waste pursuant to RCRA. 30 TAC § 335.1(64). Similarly, 30 TAC § 335.1(62) defines "industrial hazardous waste" as any industrial solid waste or combination of industrial solid wastes identified or listed by the administrator of the EPA as hazardous in accordance with RCRA. It further notes that the characteristics of hazardous waste and the listed wastes appear in 40 CFR, Part 261. Because the definition of "hazardous waste" and "industrial hazardous waste" both defer to Part 261's definition, these wastes are also excluded as hazardous waste in TCEQ's program.

B. Inorganic Chemical Manufacturing Wastes Identification and Listing RCRA Revision Checklist 195 - HSWA/Non-HSWA

Identification and Listing of Hazardous Waste. Through the November 20, 2001, amendment, the EPA added three inorganic chemical manufacturing wastes to its list of hazardous wastes: K176, K177, and K178. EPA promulgated the listings of K176 and K178 under HSWA authorities. The listing of K178 is under Non-HSWA authority. EPA added them by amending the following sections of the CFR to include these new wastes: 40 CFR § 261.4(b)(15)(i)-(v), 40 CFR § 261.32, and Appendix VII to Part 261. The TCEQ's rules incorporate these changes by deleting language that excluded wastes listed in § 261.4(b)(15) from inclusion in the definition of solid waste at 30 TAC § 335.1(134)(A)(iv); incorporating by reference Subpart D of Part 261, which includes § 261.32, as it exists through February 24, 2005, at 30 TAC § 335.504; and by incorporating by reference Appendix VII of Part 261 through February 24, 2005, at 30 TAC § 335.29(2).

Land Disposal Restrictions. The November 20, 2001, amendment created 40 CFR § 268.32, which generally prohibits land disposal of K176, K177, and K178, and sets forth exceptions to this rule. The amendment also added new entries for K176, K177, and K178 to Treatment Standards Table in Part 268. 30 TAC § 335.431(c) incorporates by reference through February 24, 2005, amendments, Part 268, excluding some provisions not relevant to § 268.32 and the Treatment Standards Table.

C. Corrective Action Management Unit (CAMU) Amendments
RCRA Revision Checklist 196 - HSWA

Definitions. A January 22, 2002, amendment to the CAMU rules in RCRA deleted the definition of CAMU at 40 CFR § 260.10. The TCEQ amended its rules by similarly striking the definition of CAMU, formerly at 30 TAC § 335.1(33). EPA's January 22, 2002, amendment to the CAMU rules also changed the definition of "Remediation Waste." Before the amendment, the definition was "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 cleanup." The amendment deleted the phrase "which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic," because the language could be read to limit the waste eligible for placement in a CAMU to only hazardous wastes, when EPA intended to allow both hazardous and non-hazardous solid wastes to be stored in these units. The TCEQ's definition of "Remediation Waste," found at 30 TAC § 335.1(123), tracks the language of the EPA definition except for two differences. The first is that the TCEQ's definition does not delete the "which contain hazardous waste..." phrase. This does not effect equivalency because the TCEQ program has always read its definition to include both hazardous and non-hazardous wastes. The second difference is that the TCEQ definition contains an additional sentence stating that only wastes from the facility being cleaned up are eligible for the unit. This is consistent with EPA's CAMU rules, which later discuss that CAMUs may be used for facility waste. *See, for example*, 40 CFR § 264.550. Neither of these differences affects equivalency.

Grandfathering pre-amendment CAMUs. The January 22, 2002, EPA amendment to RCRA CAMU rules allows CAMUs created before April 22, 2002, the effective date of the new rule, to continue to operate under the previous rules. 40 CFR § 264.550(a) directs all CAMUs except those discussed in § 264.550(b) to follow the "new" rules at 40 CFR § 264.552. Section 264.550(b) directs CAMUs approved before April 22, 2002, and CAMUs that have submitted substantially complete applications before November 20, 2000, to follow the rules in 40 CFR § 264.551, the "old" rules. The EPA amendment then moved the "old" rules, which had been found at 40 CFR § 264.552, to 40 CFR § 264.551. It also changed a reference to the definition of CAMU (eliminated by the amendment) to refer to "remediation waste." All of these rules are part of Subpart S of 40 CFR Part 264. At 30 TAC § 335.152(a)(14), the TCEQ adopted by reference all of Subpart S of 40 CFR Part 264 through the January 22, 2002, amendment.

New CAMU standards. The January 22, 2002, EPA amendment creates new standards for CAMUs authorized after the amendment. Those standards are contained in 40 CFR § 264.552, in Subpart S of 40 CFR Part 264. At 30 TAC § 335.152(a)(14), the TCEQ adopted by reference all of Subpart S of 40 CFR Part 264 through the January 22, 2002, amendment.

D. Corrections to Hazardous Air Pollutant Standards for Combustors (2/22/02)
RCRA Revision Checklist 198 - HSWA/Non-HSWA

This amendment makes technical corrections to 40 CFR Part 266, hazardous air pollutant standards for combustors. The February 22, 2002, amendment corrects internal references that were incorrect in the original EPA rule. The TCEQ adopts these changes by incorporating Part 266 of 40 CFR through the February 24, 2005, amendment by reference at 30 TAC § 335.221(a).

The amendment also changed 40 CFR § 270.42(j)(1) by requiring owners and operators to comply with the notification requirements in effect before October 11, 2000. The TCEQ makes the same change to its rule at 30 TAC § 305.69(i)(1).

E. Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste.
RCRA Revision Checklist 199 - Non-HSWA

Mineral Processing Spent Materials Being Reclaimed as Solid Wastes. The U.S. Court of Appeals for the District of Columbia, in *Association of Battery Recyclers v. EPA*, 208 F.3d 1047, 1064 (D.C. Cir. – 2000), vacated two parts of a May 26, 1998, amendment to the RCRA rules. The first vacated part of the rule involved the classification of mineral processing by-products and sludges being processed as solid waste. The EPA's March 13, 2002, amendment removed the phrase "except as provided under 40 CFR § 261.4(a)(17)" from the end of the second sentence in 40 CFR § 261.2(c)(3), part of the EPA's definition of solid waste. The TCEQ deleted the same language from 30 TAC § 335.1(133)(D)(iii), the portion of its definition that tracks the same EPA language. In the same amendment, the EPA made several changes to 40 CFR § 261.4(a)(17). The TCEQ incorporates EPA's § 261.4(a)(17) by reference through July 24, 2002, at 30 TAC § 335.1(133)(A)(iv).

TCLP Use with MGP Waste. The second part of EPA's rules that the D.C. Circuit vacated disallowed the use of the Toxicity Characteristic Leaching Procedure (TCLP) for determining whether manufactured gas plant (MGP) waste is hazardous. The EPA amended 40 CFR § 261.24(a) by inserting "(except manufactured gas plant waste)" when discussing this test. The TCEQ adopts the entirety of Subpart C of Part 261, which includes § 261.24, by reference through March 13, 2002, at 30 TAC § 335.504(3).

IV. RCRA CLUSTER XIII

A. Zinc Fertilizers Made from Recycled Hazardous Secondary Materials RCRA Revision Checklist 200 - HSWA/Non-HSWA

Exclusion from Definition of Solid Waste. The July 24, 2002, EPA amendment to RCRA rules added to 40 CFR § 261.4 paragraphs (a)(20) and (21), excluding from the definition of "solid wastes" hazardous secondary materials used to make zinc fertilizers meeting certain conditions. 30 TAC § 335.1(133), TCEQ's definition of solid waste, also excludes these wastes by incorporating 40 CFR § 261.4 by reference through the July 24, 2002, amendment.

Applicability of Land Treatment Standards. The July 24, 2002, amendment also removed from 40 CFR § 268.40 paragraph (i), regarding treatment standards for the land application of zinc fertilizers produced from or containing characteristically hazardous materials. TCEQ's rules adopt Part 268 of 40 CFR by incorporating it by reference, through EPA's 2005 amendments, at 30 TAC § 335.431(c).

B. Corrections to Hazardous Air Pollutant Standards for Combustors (12/19/02) RCRA Revision Checklist 202 - HSWA

Information Requirements for Incinerators. The EPA's December 19, 2002, amendment of 40 CFR § 270.19(e) added language specifying that certain requirements of § 270.19 still apply as necessary to comply with § 264.34(a) and (c). The TCEQ makes the same amendments to 30 TAC § 305.175. The TCEQ rule is equivalent to the EPA rule as it tracks the EPA rule's language with the exception of a parenthetical example and a redundant explanatory phrase.

Information Requirements for Boilers and Industrial Furnaces. The EPA's December 19, 2002, amendment of 40 CFR § 270.22 added language specifying that certain requirements of § 270.22 still apply as necessary to comply with § 266.102(e)(1) and (2)(iii). The TCEQ makes the same amendments to 30 TAC § 305.571(b). The TCEQ rule is equivalent to the EPA rule as it tracks the EPA rule's language with the exception of a parenthetical example and a redundant explanatory phrase.

Hazardous Waste Incinerator Permits. The EPA's December 19, 2002, amendment of 40 CFR § 270.62 added language specifying that certain requirements of § 270.62 still apply as necessary to comply with § 264.34(a) and (c). The TCEQ makes the same amendments to 30 TAC § 305.175. The TCEQ rule is equivalent to the EPA rule as it tracks the EPA rule's language with the exception of a parenthetical example and a redundant explanatory phrase.

Permits for Boilers and Industrial Furnaces Burning Hazardous Wastes. The EPA's December 19, 2002, amendment of 40 CFR § 270.66 added language specifying that certain requirements of § 270.66 still apply as necessary to comply with § 266.102(e)(1) and (2)(iii). The TCEQ makes the same amendments to 30 TAC § 305.571(b). The TCEQ rule tracks the EPA rule's language with the

exception of a parenthetical example and a redundant explanatory phrase, neither of which affect equivalency.

V. RCRA CLUSTER XV

A. Listing of Non-Wastewaters from Dyes and Pigments RCRA Revision Checklist 206

Exclusions. The EPA's February 24, 2005, amendment to its RCRA rules adds new wastes generated from the production of certain dyes, pigments, and FD&C colorants to the hazardous waste lists. In doing so, the EPA added subparagraph (b)(15) to 40 CFR § 261.4, which excludes these newly listed wastes from the hazardous waste definition, so long as they had been disposed of prior to the effective date of the listing and meet several other criteria. 30 TAC § 335.504 sets forth the process for waste classification. Section 335.504(1) states that a waste is hazardous as long as it is not excluded pursuant to 40 CFR Part 261 as amended through February 24, 2005.

Listing. The EPA's February 24, 2005, amendment to its RCRA rules newly lists the following wastes as hazardous wastes by amending 40 CFR § 261.32 (containing the lists of hazardous wastes generated from specific sources) to add K181 (generally, non-wastewaters from the production of dyes or pigments) and to set regulatory thresholds for it. 30 TAC § 335.504 sets forth the process for waste classification. Section 335.504(2) states that a waste is hazardous if it is a listed waste pursuant to 40 CFR Part 261, Subpart D as amended through February 24, 2005. 40 CFR § 261.32 is included in Subpart D. The EPA further incorporated the listing into its RCRA rules in the February 24, 2005, amendment by amending Appendices VII and VIII of Part 261, Subpart D to add the waste as well as the chemicals that commonly constitute the waste. The TCEQ incorporates both appendices by reference, through the February 24, 2005, amendment, in its rules at 30 TAC § 335.504(2).

Land Disposal Restrictions & Treatment Standards. The EPA's February 24, 2005, amendment to its RCRA rules amends 40 CFR § 268.20 to prohibit the land disposal of the newly listed K181, unless certain treatment standards are met. It also amends 40 CFR § 268.40, the treatment standard table, to add waste codes K181 and F039, and 40 CFR § 268.48, the universal treatment standards table, to add the treatment standards for these wastes. The TCEQ rules adopt these changes at 30 TAC § 335.431(c)(1), which incorporates all of Part 268, through the February 24, 2005, amendment, by reference, excepting several programs exclusive to EPA and not relevant to this rule.

B. Uniform Hazardous Waste Manifest Rule RCRA Revision Checklist 207

1. General

Definitions. EPA's March 4, 2005, amendment of its RCRA rules amended several definitions at 40 CFR § 260.10. EPA deleted the definition of "manifest document number" and revised the

definitions of "designated facility," "manifest" and "manifest tracking number." 30 TAC § 335.1 is TCEQ's definition section. TCEQ rules did not define "manifest document number," so there was nothing to delete. TCEQ's definition of "designated facility" at 30 TAC § 335.1(36) contains all of the elements of the EPA definition, although it is broader in scope because it also applies to Class I industrial waste. The TCEQ's definition of "manifest" at 30 TAC § 335.1(90) is at least equivalent to and in some respects broader in scope than the EPA definition. It omits a surplus phrase from the EPA definition. It is broader than the EPA definition because it also applies to Class I industrial waste. TCEQ's definition of "manifest tracking number" generally tracks the language of the EPA definition, except that it omits the specific location of the tracking number on the manifest. The TCEQ definition, however, contains enough information that it is clear that both definitions are referring to the same item on the manifest.

Residues of Hazardous Waste in Empty Containers. EPA's March 4, 2005, amendment also revised 40 CFR § 261.7(b)(1)(iii)(A) and (B) to change the referenced container size. TCEQ made the same changes to its rule at 30 TAC § 335.41(f)(2)(A)(iii).

2. Rules Applicable to Generators of Hazardous Waste

General Manifest Requirements. EPA's March 4, 2005, amendment revises 40 CFR § 262.20(a) to require its new manifest form and notes that use of the new form should begin on September 5, 2006. The TCEQ rule, 30 TAC § 335.10(a), requires use of the same manifest form, but requires its use beginning the effective date of the TCEQ rule, August 31, 2006, five days earlier than the EPA rule. Section 335.10(a) of the TCEQ rule contains additional language exempting certain small quantity generators from manifesting requirements at § 335.10(a). While 40 CFR § 262.20(a) does not contain a similar exemption, EPA exempts these generators from its manifesting requirement in another section, 40 CFR § 261.5. The TCEQ rule does not refer to the form for additional pages in its rule, but this omission should not affect equivalency. Finally, TCEQ's rule requires manifests for Class I industrial wastes, in addition to hazardous wastes.

Manifest Tracking Numbers and Printing: Obtaining Manifests. EPA's March 4, 2005, amendment revised 40 CFR § 262.21. The rule prohibits printing manifests without EPA's permission and sets forth a procedure to obtain approval to print manifests. The TCEQ rule, 30 TAC § 335.10(b), prohibits printing manifests until a person has obtained EPA's permission to print pursuant to 40 CFR § 262.21.

Waste Minimization Certification. EPA's March 4, 2005, amendment added 40 CFR § 262.27, which requires generators initiating a hazardous waste shipment to make a waste minimization certification. TCEQ's rules, specifically 30 TAC § 335.10(c), require all manifests to be completed in accordance with EPA's instructions for completing the hazardous waste manifest found in the appendix of 40 CFR Part 262. Those instructions include completion of the waste minimization certification found at 40 CFR § 262.27.

Pre-Transport Marking. EPA's March 4, 2005, amendment of 40 CFR § 262.32 revised the language that must be placed on each container of 119 gallons or less before transport. TCEQ's rules, specifically 30 TAC § 335.67(b), tracks the language of EPA's amended rule.

Pre-Transport Placarding. EPA's March 4, 2005, amendment of 40 CFR § 262.33 added language referencing U.S. Department of Transportation (U.S. DOT) rules that require certain markings on shipments, even when they may not require a placard. 30 TAC § 335.68 generally tracks the language of 40 CFR § 262.33, except that it paraphrases the U.S. DOT rules in addition to citing them.

Pre-Transport Accumulation Time. EPA's May 2005 amendment to 40 CFR § 262.34 added paragraph (m), which allows generators to accumulate rejected loads and residual waste from waste containers in accordance with paragraphs (a), (b), or (d), (e) and (f) of 40 CFR § 262.34, so long as the proper lines on the manifest are filled out. The TCEQ amended 30 TAC § 335.69 to add subsection (m), which similarly allows generators to accumulate rejected loads and residual waste from waste containers in accordance with subsections (a), (b), or (d), (e) and (f) of § 335.69, so long as the proper lines on the manifest are filled out. On its face, the TCEQ amendment appears to be the same as the EPA's. But because the signposting in the TCEQ rule is different than that of the EPA rule after subsection (b), the provisions are actually different. 30 TAC § 335.69(a) states that subsection (a) applies unless one otherwise meets requirements in subsections (f)-(k). While this covers all of the provisions mentioned in the EPA rule, it also allows electroplaters additional accumulation time in a send-back situation when they would not have that time under EPA's § 262.34(m).

Special Manifest Requirements for Exports of Hazardous Waste. EPA's March 4, 2005, amendment of 40 CFR § 262.54 added language requiring hazardous waste exporters to check the export box on the manifest and note the point-of-exit city and allowing exporters to obtain a manifest from any EPA-registered manifest source. TCEQ's rules, specifically 30 TAC § 335.10(c), require all manifests to be completed in accordance with EPA's instructions for completing the hazardous waste manifest found in the appendix of 40 CFR Part 262. Those instructions include the amendments to 40 CFR § 262.54.

Manifest Requirements for Imports of Hazardous Waste. EPA's March 4, 2005, amendment of 40 CFR § 262.60 revised paragraph (c) and added paragraphs (d) and (e) requiring those who import hazardous waste to check a box on the manifest, note the point-of-import city, and provide the transporter with an additional copy of the manifest for the receiving facility. TCEQ's rules, specifically 30 TAC § 335.10(c), require all manifests to be completed in accordance with EPA's instructions for completing the hazardous waste manifest found in the appendix of 40 CFR Part 262. Those instructions include the amendments to 40 CFR § 262.60.

Appendix to 40 CFR Part 262. EPA's March 4, 2005, amendment revised the appendix of 40 CFR Part 262, which contains instructions for completing the hazardous waste manifest form. TCEQ's rules, specifically 30 TAC § 335.10(c), require all manifests to be completed in accordance with EPA's instructions for completing the hazardous waste manifest found in the appendix of 40 CFR Part 262. Those instructions include the amendments to 40 CFR § 262.60.

3. Standards Applying to Transporters of Hazardous Waste

Manifests, Exports. EPA's March 4, 2005, amendment revised paragraphs (a) and (g) of 40 CFR § 263.20. TCEQ's rule, 30 TAC § 335.11(a)(2), requires exporters of hazardous waste to ensure that their manifests conform to EPA's requirements at 40 CFR § 263.20. The TCEQ rule also requires manifests for Class I industrial wastes in addition to hazardous wastes.

Compliance with Manifest. EPA's March 4, 2005, amendment revised paragraph (b) of 40 CFR § 263.21. TCEQ's rule, 30 TAC § 335.11(b), prohibits one from transporting hazardous waste or Class I industrial solid waste without an EPA manifest that has been filled out in accordance with 30 TAC § 335.10(c) and 40 CFR Part 263. 30 TAC § 335.10(c) requires all manifests to be completed in accordance with 40 CFR Part 262. Part 262's appendix contains the instructions for completing the hazardous waste manifest. The changes in 40 CFR § 263.21 are included in these instructions. The changes to 40 CFR § 263.21 are also included in TCEQ's reference to compliance with Part 263. The TCEQ rule also applies to Class I industrial wastes in addition to hazardous wastes.

4. Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

Applicability. EPA's March 4, 2005, amendment of 40 CFR § 264.70 added paragraph (b), providing that revised manifest forms be used from September 5, 2006, forward. TCEQ's rule, 30 TAC § 335.152(a)(4), incorporates Subpart E of Part 264 of the CFR by reference through the June 16, 2005, amendment. Subpart E of Part 264 contains the manifesting rules for owners and operators of hazardous waste treatment, storage, and disposal (TSD) facilities, including 40 CFR § 264.70.

Use of Manifest System. EPA's March 4, 2005, amendment revised paragraphs (a) and (b)(4) and added paragraph (e) to 40 CFR § 264.71. TCEQ's rule, 30 TAC § 335.152(a)(4), incorporates Subpart E of Part 264 of the CFR by reference through the June 16, 2005, amendment. Subpart E of Part 264 contains the manifesting rules for owners and operators of hazardous waste TSD facilities, including 40 CFR § 264.71.


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Manifest Discrepancies. EPA's March 4, 2005, amendment revises paragraphs (a) and (b) and adds paragraphs (c), (d), (e), (f), and (g) to 40 CFR § 264.72, describing the steps to be taken when discovering a significant manifest discrepancy. TCEQ's rule, 30 TAC § 335.152(a)(4), incorporates Subpart E of Part 264 of the CFR by reference through the June 16, 2005, amendment. Subpart E of Part 264 contains the manifesting rules for owners and operators of hazardous waste TSD facilities, including 40 CFR § 264.72.

Unmanifested Waste Report. EPA's March 4, 2005, amendment revised 40 CFR § 264.76, describing the steps an owner of a TSD facility must take if hazardous waste arrives at the facility without a manifest. TCEQ's rule, 30 TAC § 335.152(a)(4), incorporates Subpart E of Part 264 of the CFR by reference through the June 16, 2005, amendment. Subpart E of Part 264 contains the manifesting rules for owners and operators of hazardous waste TSD facilities, including 40 CFR § 264.76.

5. Interim Status Standards for TSD Owners and Operators

Applicability. EPA's March 4, 2005, amendment revised 40 CFR § 265.70 paragraph (a) and added paragraph (b), providing that revised manifest forms be used from September 5, 2006, forward. TCEQ's rule, 30 TAC § 335.112(a)(4), incorporates Subpart E of Part 265 of the CFR by reference through the June 16, 2005, amendment. Subpart E of Part 265 contains the manifesting rules for owners and operators of hazardous waste TSD facilities, including 40 CFR § 265.70.

Use of Manifest System. EPA's March 4, 2005, amendment revised paragraphs (a) and (b)(4) and added paragraph (e) to 40 CFR § 265.71. TCEQ's rule, 30 TAC § 335.112(a)(4), incorporates Subpart E of Part 265 of the CFR by reference through the June 16, 2005, amendment. Subpart E of Part 265 contains the manifesting rules for owners and operators of hazardous waste TSD facilities, including 40 CFR § 265.71.

Manifest Discrepancies. EPA's March 4, 2005, amendment revises paragraphs (a) and (b) and adds paragraphs (c), (d), (e), (f), and (g) to 40 CFR § 265.72, describing the steps to be taken when discovering a significant manifest discrepancy. TCEQ's rule, 30 TAC § 335.112(a)(4), incorporates Subpart E of Part 265 of the CFR by reference through the June 16, 2005, amendment. Subpart E of Part 265 contains the manifesting rules for owners and operators of hazardous waste TSD facilities, including 40 CFR § 265.72.

Unmanifested Waste Report. EPA's March 4, 2005, amendment revised 40 CFR § 265.76, describing the steps an owner of a TSD facility must take if hazardous waste arrives at the facility without a manifest. TCEQ's rule, 30 TAC § 335.112(a)(4), incorporates Subpart E of Part 265 of the CFR by reference through the June 16, 2005, amendment. Subpart E of Part 265 contains the manifesting rules for owners and operators of hazardous waste TSD facilities, including 40 CFR § 265.76.


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