



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 272**

**[EPA-R06-RCRA-2016-0549; FRL-10004-22-Region 6]**

### **Texas: Final Authorization of State-Initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule and response to comments.

**SUMMARY:** In this rule, the Environmental Protection Agency (EPA) is approving state-initiated changes and incorporation by reference of the State of Texas hazardous waste program under the Resource Conservation and Recovery Act. The EPA also addresses comments it received after issuing two proposed rules on the Texas revisions. EPA is confirming the program revisions to the State of Texas hazardous waste program satisfy all requirements needed to qualify for final authorization. No further opportunity for comment will be provided. This final rule also codifies and incorporates by reference the authorized provisions of the Texas statutes and regulations in the Code of Federal Regulations.

**DATES:** This final rule is effective [*insert date of publication in the Federal Register*]. The incorporation by reference of authorized provisions in the Texas statutes and regulations contained in this rule is approved by the Director of the Federal Register as of [*insert date of publication in the Federal Register*], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-RCRA-2016-0549. All documents in the docket are listed in *www.regulations.gov* index.

Although listed in the index, some of the information is not publicly available. e.g., Confidential

Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy. You can view and copy the documents that form the basis for the codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m., Monday through Friday, at the following location: EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas, 75270, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office.

**FOR FURTHER INFORMATION, CONTACT:** Alima Patterson, Region 6, Regional Authorization/Codification Coordinator, Permit Section (LCR-RP), Land, Chemicals and Redevelopment Division, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and Email address *patterson.alima@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**A. What were the comments and responses to EPA's proposal?**

During the initial public comment period that ended on November 23, 2018, EPA received comments from three sources regarding EPA's proposal to (1) authorize State-initiated changes to Texas' hazardous waste regulations in accordance with 40 CFR part 271 and (2) codify in 40 CFR part 272, the prior approval of Texas' hazardous waste management program and incorporate by reference authorized provisions of the State's statutes and regulations. For the public comment period ending August 9, 2019, EPA received one comment from one of the initial commenters which reiterated concerns about the Texas authorized program. The full set of comments can be found in the docket for this action.

In accordance with 40 CFR parts 271 and 272, EPA provides the following responses to comments regarding the authorization and codification of Texas' hazardous waste program under RCRA subtitle C:

One commenter made a reference to a previous Texas authorization Federal Register notice published on September 3, 2014 (79 FR 52220; EPA-R06-RCRA-2013-0624-0003) in which the commenter raised an issue about Texas' land disposal restrictions (LDR) requirements. In an initial comment received on November 19, 2018 for the October 24, 2018 Proposed Rule, the commenter asserted that EPA does not address public comments that oppose a State's authorization and requested a "complete top-to-bottom review" of Texas' RCRA program, starting with the Texas land disposal restrictions and the hazardous fluorescent lamp programs to ensure that the State's program is no less stringent than the Federal law and regulations. This same commenter reiterated the same concerns in a comment submitted during the extended public comment period that ended on August 9, 2019. EPA responds to this comment as follows:

The commenter's assertion that EPA does not address public comments that oppose a State's authorization is incorrect. The EPA does address adverse comments that pertain to specific final rules for which a State is seeking authorization. In the case of the September 3, 2014 Federal Register notice, the Texas authorization did not pertain to the LDR program and therefore the comment about LDR was not relevant to the action addressed in that authorization notice. See *www.regulations.gov* for the response to the comment posted on September 15, 2014. With respect to the hazardous waste lamp rule, as introduced into the Federal regulations on July 6, 1999 (64 FR 36466), EPA reviewed Texas regulations for those provisions and determined that they were equivalent to the Federal requirements and authorized the State for the lamp requirements (70 FR 34371, June 14, 2005). EPA can only address the comments and take action

on the specific set of rules which are identified in the current rulemaking. Prior rulemakings should be challenged at the time they are proposed and finalized. If they are not challenged in a timely manner, the concept of final agency action under the Administrative Procedure Act (See 5 U.S.C. Sec.704) would be undermined. In order to adequately address the concerns of this anonymous commenter, EPA recommends that the commenter contact EPA directly and send written documentation, outlining the specific reasons for their assessment and conclusions about the Texas authorized hazardous waste program. The information sent to EPA should provide supporting documentation and rationale for their evaluation of the Texas program or the commenter may contact the Region to discuss their concerns.

A second set of comments were submitted by the Sierra Club which raised a number of issues related to: (1) EPA's proposed authorization of State-initiated changes to Title 30, Texas Administrative Code, sections 335.155(1) and 335.261(b)(15), analogous to 40 CFR 264.77(a) and 273.8(a)(2), respectively; (2) authorized Texas provisions and amendments to previously authorized provisions in the Texas regulations; and (3) limited explanation and information about accessing the agency's documents underlying the proposed action.

In the first issue, the Sierra Club objected to EPA authorizing the State-initiated changes that EPA has deemed minor without the State submitting a formal application for EPA authorization or providing the citation of authority which explains the basis for the absence of a formal application. The Sierra Club further asserted that the formal application would have provided the associated public participation processes. EPA's response to this comment is discussed in Section B below.

The second issue raised by the Sierra Club involved the documentation EPA provided in the proposed rule relative to the codification and incorporation by reference of the Texas authorized

program. The Sierra Club acknowledged that in the proposed rule, EPA notified the public that there are some provisions of the Texas hazardous waste management program that are not part of the Federally authorized State program; such as State analogs to Federal provisions for which the State is not authorized, unauthorized amendments to previously authorized State provisions, new unauthorized State requirements and Federal rules for which Texas is authorized but which have since been vacated. See, 83 FR 53597, October 24, 2018. In addition, the Sierra Club emphasized that “[S]imply noting that there are such unauthorized provisions in the Texas program and that they are not Federally enforceable falls short of EPA’s legal obligations under RCRA.” and “if the Texas hazardous waste program contains any provision that is less stringent than the Federal requirements, it is unlawful and EPA must disapprove it until those provisions are corrected or eliminated.” EPA responds to this comment as follows:

As discussed in Section II.C of the proposed rule, the purpose of the codification of the Texas statutes and regulations under 40 CFR part 272 is to clarify which of the Texas provisions are included in the authorized and Federally enforceable program and for the public to be able to discern the status of Federally approved requirements of the Texas hazardous waste management program. The codification process that EPA follows requires the Agency to review the State’s entire regulations in order to document the provisions that EPA has already authorized, and to identify all provisions and language in the State’s regulations that EPA has not authorized. Such unauthorized State provisions may include (1) analogs to Federal provisions adopted by the State; (2) State-only provisions with no Federal analogs; (3) amendments to previously authorized provisions; or (4) Federal provisions adopted by the State but which have since been vacated by a Court at the Federal level. The process allows EPA to identify regulatory and statutory deficiencies in the State’s authorized program and to require the State to make

corrections and amendments to the State regulations and statutes to be at least equivalent and consistent and not less stringent than the Federal program. The State is then required to submit a program revision application to EPA for review and approval. While the State is addressing those issues, EPA proceeds with the codification of the State's authorized program and makes it clear to the public in the codification Federal Register document which State provisions are not part of the authorized program.

In the case of the Comparable Fuels Exclusions (63 FR 33782, 6/19/98) and the Hazardous Waste Gasification Exclusion (73 FR 57 1/2/08) for which Texas was previously authorized, but which have since been vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144, respectively; June 27, 2014), the EPA is clarifying in this final rule, that the Texas provisions are no longer part of the State's authorized program. The effect of the vacatur on all States, including Texas, is that the previously authorized comparable fuels and gasification rules from the State program are no longer to be considered part of the Federally authorized program. Thus, EPA may bring enforcement actions under RCRA Section 3008 at facilities that do not comply with the RCRA hazardous waste regulations.

EPA has been working with the State of Texas to make the necessary corrections to its regulations and to submit an application to EPA for review. In the Binder entitled "*EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program*," dated December 2015 (the Binder) that is incorporated by reference, EPA crosses out all provisions and language that EPA has determined are not part of the State's authorized requirements. The "*Addendum to the EPA Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program*" (the Addendum) includes the actual State regulatory text authorized by the EPA for the citations listed at 272.2201(c)(4).

Finally, the commenters indicated that EPA did not make available in the e-docket at *www.regulations.gov* all supporting documents for EPA's proposed authorization and codification of the Texas hazardous waste management program. With the publication of the August 9, 2019 Federal Register notice that extended the public comment period for 30 days, EPA provided all supporting documents at *www.regulations.gov*. Copies of both the Binder and the Addendum were also made available to the public in the e-docket at *www.regulations.gov*.

**B. What State-initiated changes is EPA authorizing with this action?**

The Sierra Club objected to EPA authorizing the State-initiated changes that EPA has deemed minor without the State submitting a formal application for EPA authorization or providing the citation of authority which explains the basis for the absence of a formal application. The Sierra Club further asserted that the formal application would have provided the associated public participation processes. EPA responds to this comment as follows:

According to 40 CFR 271.21 *Procedures for revision of State Programs*—40 CFR 271.21(a) provides, “Either EPA or the approved State may initiate program revision.” Further, 40 CFR 271.21(b)(1) states “The State shall submit a modified program description, . . . , or such other documents as EPA determines to be necessary under the circumstances.” Under the circumstances of these revisions EPA has determined that the only documents deemed necessary are the Texas RCRA statutes and regulations. We determined this because State-initiated changes addressed in the proposed rule were corrections to technical errors in the State's regulations that did not impact substance of the State's authorized hazardous waste management program. Specifically, Texas amended 335.155(1) [analog to 40 CFR 264.77(a)] to correct an error in the internal reference by replacing “264.56(j)” with “264.56(i). Texas also amended 335.261(b)(15) [analog to 40 CFR 264.77(a) and 273.8(a)(2)] to provide correct references to 40

CFR 273.8(a)(2) and 261.5. EPA deemed these corrections to be of a such a non-substantive/minor nature that submission of additional material was not necessary. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to, and no less stringent than the corresponding Federal laws and regulations.

Based on EPA's responses to the comments received regarding the proposed authorization of the State-initiated changes, the EPA now makes a final decision that Texas' hazardous waste program revisions satisfy the requirements necessary to qualify for final authorization in accordance with 40 CFR 271.21(a). EPA will continue to implement and enforce Hazardous and Solid Waste Amendments of 1984 (HSWA) provisions for which the State is not authorized. EPA also retains its authority under RCRA sections 3007, 3008, 3013 and 7003 which include, among others, authority to: (1) take enforcement actions regardless of whether the State has taken its own action, (2) enforce RCRA requirements and suspend or revoke permits; and (3) perform inspections, and require monitoring, tests, analyses or reports.

### **C. Amendments to 40 CFR 272.2201**

In this final action, the EPA is incorporating by reference the Texas authorized hazardous waste program in subpart SS of 40 CFR part 272. Section 272.2201(c)(1) incorporates by reference Texas' authorized hazardous waste statutes and regulations. Section 272.2201 also references material which is not being incorporated by reference, but which the EPA considered in determining the adequacy of Texas' program. Section 272.2201(c)(2) references sections of the Texas statutes which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, §§ 272.2201(c)(6), (7), and (8) reference the Memorandum of Agreement, the Attorney General's Statements, and the Program Description, respectively. These documents are evaluated as part of the approval process of the hazardous

waste management program in accordance with subtitle C of RCRA but are not part of the material to be incorporated by reference.

State provisions that are “broader in scope” than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, the EPA lists in 40 CFR 272.2201(c)(3) the Texas statutory and regulatory provisions that are “broader in scope” than the Federal program, and which are not part of the authorized program being incorporated by reference. While “broader in scope” provisions are not part of the authorized program and cannot be enforced by the EPA, the State may enforce such provisions under State law. At 40 CFR 272.2201(c)(4) and (5), EPA lists amendments to Texas regulations and Federal rules which are not part of the Texas authorized program.

The October 24, 2018 proposed rule provides details about the effect of Texas’s codification on enforcement (See, Section III.D, 83 FR 53597) and on Federal requirements promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA) (See Section III.F, 83 FR 53598).

## **1. Incorporation by Reference**

In the Federal Register document published on October 24, 2018 (83 FR 53595), the EPA also proposed to codify the EPA’s authorization of Texas’ base hazardous waste management program and the State’s revisions to that program. In this action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Texas authorized hazardous waste statutes and regulations described in the amendments to 40 CFR 272.2201 set forth below. The EPA has made, and will continue to make, these materials generally available electronically

through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## **2. Correction and Clarification**

In this final rule, the EPA is making corrections and clarifying the language in 40 CFR 272.2201(c)(5) and the associated Table. The Table includes an incorrect entry for Withdrawal of the Emission Comparable Fuel Exclusion under RCRA (Checklist 224—amendments to 40 CFR 261.4(a)(16) and 261.38) (75 FR 33712, June 15, 2010). Texas adopted and was authorized for the Comparable Fuel exclusion as introduced by the Hazardous Waste Combustors Revised Standards final (63 FR 33782, June 19, 1998 (Revision Checklist 168); however, the State did not adopt, and was not authorized for the amendment to the Comparable Fuel exclusion published on June 15, 2010. Thus, EPA is correcting the § 272.2201(c)(5) Table to remove the third entry regarding the June 15, 2010 final rule (Revision Checklist 224). The EPA is also adding language to § 272.2201(c)(5) to clarify that EPA may bring enforcement action under RCRA section 3008 at facilities that do not comply with the terms of the court vacatur. The EPA is also correcting a typographical error in the entry for Checklist 224 in the §272.2201(c)(4)(iv) Table by replacing the Federal Register reference “73 FR 33712” with “75 FR 33712.”

## **D. Administrative Requirements**

This final action authorizes and codifies State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. For further information on how this authorization and codification comply with applicable executive orders and statutory provisions, please see the proposed rule published in the Federal Register (83 FR 53595, October 24, 2018).

The Congressional Review Act, 5 U.S.C. 801 – 808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective [**insert date of publication in the Federal Register**].

#### **List of Subjects in 40 CFR Part 272**

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

**Authority:** This rule is issued under the authority of Section 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926,697(b).

Dated: March 25, 2020.

**Kenley McQueen,**  
*Regional Administrator, Region 6.*

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), the EPA is granting final authorization under 40 CFR part 271 to the State of Texas for State-initiated revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

**PART 272 – APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS**

1. The authority citation for part 272 continues to read as follows:

**Authority:** Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Revise § 272.2201 to read as follows:

**§ 272.2201 Texas State-administered program: Final authorization.**

(a) *History of the State of Texas authorization.* Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Texas final authorization for the following elements as submitted to EPA in Texas' Base program application for final authorization which was approved by EPA effective on December 26, 1984. Subsequent program revision applications were approved effective on October 4, 1985, February 17, 1987, March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, December 3, 1997, October 18, 1999, November 15, 1999, September 11, 2000, June 14, 2005, December 29, 2008, July 13, 2009, May 6, 2011, May 7, 2012, January 9, 2013, November 3, 2014, December 21, 2015, February 26, 2016, and **[insert date of publication of final rule]**.

(b) *Enforcement authority.* The State of Texas has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of

RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations--(1) Incorporation by reference.* The Texas statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Texas statutes and regulations that are incorporated by reference in this paragraph from Thomson Reuters, 610 Opperman Drive, Eagan, MN 55123; Phone: 1-888-728-7677; Web site: <http://legalsolutions.thomsonreuters.com>. You may inspect a copy at EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas, 75270, Phone number: (214) 665-8533, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program”, dated December 2015.

(ii) [Reserved]

(2) *Legal basis.* The following provisions provide the legal basis for the State’s implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon, 2010, as amended by the 2015 Cumulative Annual Pocket Part, effective September 1, 2015); Chapter 361, The Texas

Solid Waste Disposal Act (TSWDA), sections 361.002, 361.016, 361.017, 361.018, 361.0215(b)(2) and (b)(3), 361.023, 361.024, 361.029, 361.032, 361.033, 361.035, 361.036, 361.037(a), 361.061, 361.063, 361.0635, 361.064, 361.0641, 361.066(b) and (c), 361.0666, 361.067, 361.068, 361.069, 361.078, 361.079, 361.0791, 361.080, 361.081, 361.082 (except 361.082(a) and (f)), 361.083, 361.0833, 361.084, 361.085, 361.0861(c), 361.0871(b), 361.088, 361.0885, 361.089 (2015 Cumulative Annual Pocket Part), 361.090, 361.095(b) through (f), 361.096, 361.097, 361.098, 361.099(a), 361.100, 361.101, 361.102 through 361.109, 361.113, 361.114, 361.116, 361.271 (2015 Cumulative Annual Pocket Part), 361.272 through 361.275, 361.278, 361.301, 361.321(a) and (b), 361.321(c) (except the phrase “Except as provided by Section 361.322(a)”), 361.321(d), 361.321(e) (except the phrase “Except as provided by Section 361.322(e)”), 361.451, 361.501 through 361.506, and 361.509(a) introductory paragraph, (a)(11), (b), (c) introductory paragraph, and (c)(2); Chapter 371, Texas Used Oil Collection, Management, and Recycling Act, sections 371.0025(b) and (c), 371.024(a), (c) and (d), 371.026(a) and (b), and 371.028.

(ii) Texas Water Code (TWC), as amended effective September 1, 2015: Chapter 5, sections 5.102 through 5.105, 5.112, 5.177, 5.351, 5.501 through 5.505, 5.509 through 5.512, 5.515, and 5.551 through 5.557; Chapter 7, sections 7.031, 7.032, 7.051(a), 7.052(a), 7.052(c) and (d), 7.053 through 7.062, 7.064 through 7.069, 7.075, 7.101, 7.102, 7.104, 7.105, 7.107, 7.110, 7.162, 7.163, 7.176, 7.187(a), 7.189, 7.190, 7.252(1), 7.351, 7.353; Chapter 26, sections 26.001(13), 26.011, 26.020 through 26.022, 26.039, and 26.341 through 26.367; and Chapter 27, sections 27.003, 27.017(a), 27.018(a) – (d), and 27.019.

(iii) Texas Government Code as amended effective September 1, 2015, section 311.027.

(iv) Texas Rules of Civil Procedure, as amended effective September 1, 2015, Rule 60.

(v) Texas Administrative Code (TAC), Title 30, Environmental Quality, 2015, as amended, effective through December 31, 2014:

(A) Chapter 10; Chapter 39, sections 39.5(g) and (h), 39.11, 39.13 (except (10)), 39.103 (except (f) and (h)), 39.105, 39.107, 39.109, 39.403(b)(1), 39.405(f)(1), 39.411 (except (b)(4)(B), (b)(10), (b)(11), and (b)(13)), 39.413 (except (10)), 39.420 (except (c) and (d)), 39.503 (except the reference to 39.405(h) in (d) introductory paragraph, and (g)), and 39.801 through 39.810;

(B) Chapter 50, sections 50.13, 50.19, 50.39, 50.113 (except (d)), 50.117(f), 50.119, 50.133, and 50.139;

(C) Chapter 55, sections 55.25(a) and (b), 55.27 (except (b)), 55.152(a)(3), 55.152(b), 55.154, 55.156 (except (d) – (g)), 55.201 (except as applicable to contested case hearings), and 55.211 (except as applicable to contested case hearings);

(D) Chapter 70, section 70.10;

(E) Chapter 281, sections 281.1 (except the clause “except as provided by...Prioritization Process”), 281.2 introductory paragraph and (4), 281.3(a) and (b), 281.5 (except the clause “Except as provided by...Discharge Permits”) and the phrases “subsurface area drip dispersal systems” and “radioactive material” in the introductory paragraph), 281.17(d) (except the references to radioactive material licenses), 281.17(e) and (f), 281.18(a) (except for the sentence “For applications for radioactive...within thirty days.”), 281.19(a) (except the last sentence), 281.19(b) (except the phrase “Except as provided in subsection (c) of this section,”), 281.20, 281.21(a) (except “and 32” and the phrase “and the Texas Radiation Control Act.”), 281.21(b), 281.21(c) (except the phrase “radioactive materials,” in 281.21(c)(2)), 281.21(d), 281.22(a) (except the phrase “For applications for radioactive...to deny the license.”), 281.22(b) (except the phrase “or an injection well,” in the first sentence and the phrase “For underground injection

wells...the same facility or activity.”), 281.23(a), and 281.24;

(F) Chapter 305, sections, 305.29, 305.30, 305.64(d) and (f), 305.66(c), 305.66(e) (except for the last sentence), 305.66(f) through (l), 305.123 (except the phrases “and 32” and “and 401”), 305.125(1) and (3), 305.125(20), 305.127(1)(B)(i), 305.127(4)(A) and (C), 305.127 (6), 305.401 (except the text “§55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment)” at (b), and 305.401(c)); and

(G) Chapter 335, sections 335.2(b), 335.43(b), 335.206, 335.391 through 335.393.

(3) *Related legal provisions.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon, 2010): Chapter 361, The Texas Solid Waste Disposal Act (TSWDA), sections 361.131 through 361.140; Chapter 371, Texas Used Oil Collection, Management, and Recycling Act, sections 371.021, 371.022, 371.024(e), 371.0245, 371.0246, 371.025, and 371.026(c).

(ii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 2015, as amended, effective through December 31, 2014: Chapter 305, sections 305.53, 305.64(b)(4), and 305.69(b)(1)(A) (as it relates to the Application Fee); Chapter 335, sections 335.321 through 335.332, Appendices I and II, and 335.401 through 335.412.

(4) *Unauthorized State amendments and provisions.* (i) The following authorized provisions of the Texas regulations include amendments published in the Texas Register that are not approved by EPA. Such unauthorized amendments are not part of the State’s authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at paragraph (c)(1)(i) of this

section, EPA will enforce the State provisions that are actually authorized by EPA. The effective dates of the State’s authorized provisions are listed in the Table below. 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 and Statutory Requirements Applicable to the Hazardous Waste Management Program, December, 2015*. Copies of the document can be obtained from EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas, 75270.

Table 1 to paragraph (c)(4)(i)

State provision (December 31, 2014)	Effective date of authorized provision	Unauthorized State Amendments	
		Texas Register reference	Effective date
335.6(a).....	7/29/92	18 TexReg 2799 22 TexReg 12060 23 TexReg 10878	5/12/93 12/15/97 10/19/98
335.6(c) introductory paragraph .....	7/29/92	17 TexReg 8010 20 TexReg 2709 20 TexReg 3722 21 TexReg 1425 21 TexReg 2400 22 TexReg 12060 23 TexReg 10878 26 TexReg 9135	11/27/92 4/24/95 5/30/95 3/1/96 3/6/96 12/15/97 10/19/98 11/15/01
335.6(g).....	7/29/92	18 TexReg 3814 22 TexReg 12060 23 TexReg 10878	6/28/93 12/15/97 10/19/98
335.24(b) introductory paragraph .....	3/1/96	21 TexReg 10983 23 TexReg 10878 38 TexReg 970	11/20/96 10/19/98 2/21/13
335.24(c) introductory paragraph .....	3/1/96	21 TexReg 10983 23 TexReg 10878	11/20/96 10/19/98

State provision (December 31, 2014)	Effective date of authorized provision	Unauthorized State Amendments	
		Texas Register reference	Effective date
		38 TexReg 970	2/21/13
335.45(b).....	9/1/86	17 TexReg 5017	7/29/92
335.204(a)(1) .....	5/28/86	16 TexReg 6065	11/7/91
335.204(b)(1) .....	5/28/86	16 TexReg 6065	11/7/91
335.204(b)(6) .....	5/28/86	16 TexReg 6065	11/7/91
335.204(c)(1) .....	5/28/86	16 TexReg 6065	11/7/91
335.204(d)(1) .....	5/28/86	16 TexReg 6065	11/7/91
335.204(e)(6) .....	5/28/86	16 TexReg 6065	11/7/91

(ii) Texas has partially or fully adopted, but is not authorized to implement, the Federal rules that are listed in the following table. The EPA will continue to implement the Federal HSWA requirements for which Texas is not authorized until the State receives specific authorization for those requirements. The EPA will not enforce the non-HSWA Federal rules although they may be enforceable under State law. For those Federal rules that contain both HSWA and non-HSWA requirements, the EPA will enforce only the HSWA portions of the rules.

Table 2 to paragraph (c)(4)(ii)

Federal Requirement	Federal Register Reference	Publication Date
Clarification of Standards for Hazardous Waste LDR Treatment Variances (HSWA) (Checklist 162)	62 FR 64504 .....	December 5, 1997
Organobromine Production Wastes; Petroleum Refining Wastes; Identification and Listing of	64 FR 36365 .....	June 8, 2000

<b>Federal Requirement</b>	<b>Federal Register Reference</b>	<b>Publication Date</b>
Hazardous Waste; Land Disposal Restrictions (HSWA) (Checklist 187)		
Zinc Fertilizers Made from Recycled Hazardous Secondary Materials (HSWA and Non-HSWA) (Checklist 200)	67 FR 48393 .....	July 24, 2002

(iii) The Federal rules listed in the table below are not delegable to States. Texas has adopted these provisions and left the authority to the EPA for implementation and enforcement.

Table 3 to paragraph (c)(4)(iii)

<b>Federal Requirement</b>	<b>Federal Register Reference</b>	<b>Publication Date</b>
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA) (Checklist 152)	61 FR 16290 .....	April 12, 1996
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Non-HSWA) (Checklist 222)	75 FR 1236 .....	January 8, 2010

(iv) Texas has chosen not to adopt, and is not authorized to implement, the following optional Federal rules:

Table 4 to paragraph (c)(4)(iv)

<b>Federal Requirement</b>	<b>Federal Register Reference</b>	<b>Publication Date</b>
NESHAPS Second Technical Correction, Vacatur (Non-HSWA) (Checklist Rule 188.1)	66 FR 24270 .....	May 14, 2001
Storage, Treatment, Transportation and Disposal of Mixed Waste (Non-HSWA) (Checklist 191)	66 FR 27218 .....	May 16, 2001
Inorganic Chemical Manufacturing Waste Identification and Listing (HSWA/Non-HSWA) (Checklist Rule 195.1)	67 FR 17119 .....	April 9, 2002

<b>Federal Requirement</b>	<b>Federal Register Reference</b>	<b>Publication Date</b>
Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium, Mercury-Containing Batteries and Silver-Containing Batteries (HSWA) (Checklist 201)	67 FR 62618 .....	October 7, 2002
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks (Non-HSWA) (Checklist 205)	69 FR 22601 .....	April 26, 2004
Revisions to the Definition of Solid Waste (Non-HSWA) (Checklist 219)	73 FR 64668 .....	October 30, 2008
Expansion of RCRA Comparable Fuel Exclusion (Non-HSWA) (Checklist 221)	73 FR 77954 .....	December 19, 2008
Withdrawal of the Emission Comparable Fuel Exclusion (Non-HSWA) (Checklist 224)	75 FR 33712 .....	June 15, 2010
Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents (Non-HSWA) (Checklist Rule 225)	75 FR 78918 .....	December 17, 2010

(5) *Vacated Federal rules.* Texas adopted and was authorized for the Federal rules listed in the Table below which have since been vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144, respectively; June 27, 2014). The effect of the vacatur on Texas is that the previously authorized comparable fuels and gasification rules from the State program are no longer be considered part of the Federally authorized program. Thus, EPA may bring enforcement actions under RCRA Section 3008 at facilities that do not comply with the RCRA hazardous waste regulations.

Table 5 to paragraph (c)(5)

<b>Federal Requirement</b>	<b>Federal Register Reference</b>	<b>Publication Date</b>
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Hazardous Waste Combustors; Revised Standards (HWA) (Checklist 168 – 40 CFR 261.4(a)(16) and 261.38 only)	63 FR 33782 .....	June 19, 1998
Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (Checklist 216 – Definition of “Gasification” at 40 CFR 260.10 and amendment to 40 CFR 261.4(a)(12)(i))	73 FR 57 .....	January 2, 2008

(6) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Texas was signed by the Executive Director of the Texas Commission on Environmental Quality (TCEQ) on December 20, 2011, and by the EPA Regional Administrator on February 17, 2012. The 2012 Memorandum of Agreement was re-certified by the Executive Director of the TCEQ on March 26, 2015, and the EPA Regional Administrator on September 30, 2015, and is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Statement of legal authority.* “Attorney General’s Statement for Final Authorization”, signed by the Attorney General of Texas on May 22, 1984 and revisions, supplements, and addenda to that Statement dated November 21, 1986, July 21, 1988, December 4, 1989, April 11, 1990, July 31, 1991, February 25, 1992, November 30, 1992, March 8, 1993, January 7, 1994, August 9, 1996, October 16, 1996, as amended February 7, 1997, March 11, 1997, January 5, 1999, November 2, 1999, March 1, 2002, July 16, 2008, December 6, 2011, February 12, 2013, and June 10, 2016] are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(8) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized

hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Amend Appendix A to part 272 by revising the listing for “Texas” to read as follows:

**Appendix A to Part 272 — State Requirements**

\* \* \* \* \*

**Texas**

The statutory provisions include:

Texas Health and Safety Code (THSC) Annotated, (Vernon, 2010): Chapter 361, The Texas Solid Waste Disposal Act, sections 361.003 (except (3), (19), (27), (35), and (39)), 361.019(a), 361.0235, 361.066(a), 361.082(a) and (f), 361.086, 361.087, 361.0871(a), 361.094, 361.095(a), 361.099(b), and 361.110; Chapter 371, The Texas Used Oil Collection, Management, and Recycling Act, sections 371.003, 371.024(b), 371.026(d), and 371.041.

Copies of the Texas statutes that are incorporated by reference are available from Thomson Reuters, 610 Opperman Drive, Eagan, MN 55123; Phone: 1-888-728-7677; Web site: <http://legalsolutions.thomsonreuters.com>.

The regulatory provisions include:

Texas Administrative Code (TAC), Title 30, Environmental Quality, 2015, as amended, effective through December 31, 2014, and where indicated, amendments effective January 8, 2015, as published in the Texas Register on January 2, 2015 (40 TexReg 77); based on the proposed rule published August 22, 2014 (39 TexReg 6376). Please note that for some provisions, the authorized versions are found in the TAC, Title 30, Environmental Quality, as amended effective January 1, 1994, January 1, 1997, December 31, 1999, December 31, 2001, or December 31, 2012. Texas made subsequent changes to these provisions but these changes have not been authorized by EPA. Where the provisions are taken from regulations other than those

effective December 31, 2014, notations are made below.

Chapter 3, Section 3.2(25) “Person”; Chapter 20, Section 20.15; Chapter 35, Section 35.402(e); Chapter 37, Sections 37.1 through 37.81, 37.100 through 37.161, 37.200 through 37.281, 37.301 through 37.381, 37.400 through 37.411, 37.501 through 37.551, 37.601 through 37.671, and 37.6001 through 37.6041; Chapter 281, Section 281.3(c);

Chapter 305, Subchapter A - General Provisions, Sections 305.1(a) (except the reference to Chapter 401, relative to Radioactive Materials); 305.2 introductory paragraph (except the references to THSC sections 401.003 and 401.004, relative to Radioactive Materials and the reference to TWC 32.002); 305.2(1), (6), (11), (12), (14), (15), (19), (20), (24), (26), (27), (28), (31), (40), (41), and (42); 305.3;

Chapter 305, Subchapter C - Application for Permit or Post-Closure Order, Sections 305.41 (except the reference to Chapter 401, relative to Radioactive Materials and the reference to TWC Chapter 32); 305.42(a), (b), (d), and (f); 305.43(b); 305.44 (except (d)); 305.45 (except (a)(7)(I) and (J)); 305.47; 305.50(a) introductory paragraph through (a)(3) (except the last two sentences in 305.50(a)(2)); 305.50(a)(4) (December 31, 2012); 305.50(a)(5) through (a)(8); 305.50(a)(13) through (a)(16); 305.50(b); 305.51;

Chapter 305, Subchapter D - Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits, Sections 305.61; 305.62(a) (except the phrase in the first sentence “§305.70 of this title...Solid Waste Class I Modifications” and the fifth sentence “If the permittee requests a modification of a municipal solid waste permit...§305.70 of this title.”); 305.62(b); 305.62(c) introductory paragraph (except the phrase “other than . . . subsection (i) of this section”); 305.62(c)(1); 305.62(c)(2) introductory paragraph; 305.62(c)(2)(A) (except the phrase “except for Texas Pollutant Discharge Elimination System (TPDES) permits,”);

305.62(c)(2)(B) (except the phrase “except for TPDES permits,”); 305.62(d) (except (d)(6)); 305.62(e) through (h); 305.63(a) (except the last sentence of (a)(3), and (a)(7)); 305.64(a); 305.64(b) (except (b)(4) and (b)(5)); 305.64(c) and (e); 305.64(g); 305.65; 305.66(a) (except (a)(7) through (a)(9)); 305.66(d); 305.67(a) and (b); 305.69(a); 305.69(b) (except the phrases “Additional Contents of Application for an Injection Well Permit” and “Waste Containing Radioactive Materials; and Application Fee” at (b)(1)(A)); 305.69(c); 305.69(d) (except (d)(7)); 305.69(e) through (h); 305.69(i)(3) and (i)(4); 305.69(j); 305.69(k) (except (k) A.8 through A.10);

Chapter 305, Subchapter F - Permit Characteristics and Conditions, Sections 305.121 (except the phrases “radioactive material disposal” and “subsurface area drip dispersal systems”); 305.122 (except (e)); 305.124; 305.125 introductory paragraph; 305.125(2) and (4); 305.125(5) (except the second sentence); 305.125(6) through (8); 305.125(9) (except (9)(C)); 305.125(10) (except the phrases “and 32” and “and 401.603”); 305.125(11) (except the phrase “as otherwise required by Chapter 336 of this title” relative to Radioactive Substances in (11)(B)); 305.125(12) through (19), and (21); 305.127 introductory paragraph; 305.127(1)(B)(iii); 305.127(1)(E) and (F); 305.127(2); 305.127(3)(A) (except the last two sentences); 305.127(3)(B) and (C); 305.127(4)(B); 305.127(5)(C); 305.128;

Chapter 305, Subchapter G - Additional Conditions for Hazardous and Industrial Solid Waste Storage, Processing, or Disposal Permits, Sections 305.141 through 305.145; 305.150;

Chapter 305, Subchapter I - Hazardous Waste Incinerator Permits, Sections 305.171 through 305.176;

Chapter 305, Subchapter J -Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses, Sections 305.181 through 305.184;

Chapter 305, Subchapter K - Research, Development, and Demonstration Permits,  
Sections 305.191 through 305.194;

Chapter 305, Subchapter L - Groundwater Compliance Plan, Section 305.401(c);

Chapter 305, Subchapter Q - Permits for Boilers and Industrial Furnaces Burning  
Hazardous Waste, Sections 305.571 through 305.573;

Chapter 305, Subchapter R - Resource Conservation and Recovery Act Standard Permits  
For Storage And Treatment Units, Sections 305.650 through 305.661;

Chapter 324, Subchapter A - Used Oil Recycling, Sections 324.1; 324.2 (except  
324.2(2)); 324.3 (except 324.3(5)); 324.4; 324.6; 324.7; 324.11 through 324.16; 324.21;  
324.22(d)(3);

Chapter 335, Subchapter A - Industrial Solid Waste and Municipal Hazardous Waste in  
General, Sections 335.1 introductory paragraph through (4), (6) through (12), (16) through (19),  
(23), (24), (26) through (30), (33), (35) through (38), (40) through (47), (48) (except for the  
phrase “or is used for neutralizing the pH of non-hazardous industrial solid waste”), (49), (50),  
(51), (53) through (58) , (60) through (64), (66), (67), (70) through (79), (81) through (115)  
(except the phrase “solid waste or” at (89), (91), (92), (94), (95), and (100)), (117) (except the  
phrase “solid waste or”), (118), (119), (123) through (128) (except the phrase “solid waste or” at  
(124)), (130), (132) through (136), (138) through (140)(A)(iii), (140)(A)(iv) introductory  
paragraph (except the last sentence), (140)(B) through (G) (except the phrase “Except for  
materials described in subparagraph (H) of this paragraph.” at (D) and (G) introductory  
paragraphs), , (140)(I) and (J), (141), (142), (144) through (154) (except the phrase “solid waste  
or” at (147), (150) and (152)), (155) through (159) (except the phrase “or industrial solid” at  
(155), (158), and (159)), (161) through (170) (except the phrase “solid waste or” at (164)), (171)

(except the phrase “or industrial solid” at (171)(B)), (172) through (174), and (175) (except the phrase “solid waste or”) (40 TexReg 77, effective January 8, 2015); 335.2 (except (b), (d), (h), (k) and (n)); 335.4; 335.5 (except (d)); 335.6(a); 335.6(b) (January 1, 1997); 335.6(c); 335.6(d) (except the last sentence) (January 1, 1994); 335.6(e) (January 1, 1994); 335.6(f) and (g); 335.6(h) (except the third sentence); 335.6(i) and (j); 335.7; 335.8(a)(1) and (2); 335.9(a) (except (a)(2) and (3)); 335.9(a)(2) and (3) (January 1, 1997); 335.9(b) (January 1, 1994); 335.10(a) and (b); 335.11(a); 335.12(a); 335.13(a) (January 1, 1997); 335.13(c) and (d) (January 1, 1994); 335.13(e) and (f) (January 1, 1997); 335.13(g) (January 1, 1994); 335.13(k); 335.14; 335.15 introductory paragraph (January 1, 1994); 335.15(1); 335.15(3) (except two references to “Class 1 Waste” at introductory paragraph); 335.17(a); 335.18(a); 335.19 (except 335.19(d)); 335.20 through 335.23(1); 335.23(2) (January 1, 1994); 335.24(a) through (f); 335.24(m) and (n); 335.29 through 335.31;

Chapter 335, Subchapter B - Hazardous Waste Management General Provisions, Sections 335.41(a) through (c); 335.41(d) introductory paragraph and (d)(2) through (d)(4); 335.41(d)(1) (December 31, 2001); 335.41(e) through (j); 335.43(a); 335.44; 335.45; 335.47 (except (b) and second sentence in (c)(3)); 335.47(b) (December 31, 1999);

Chapter 335, Subchapter C - Standards Applicable to Generators of Hazardous Waste, Sections 335.61 (except (f)); 335.62; 335.63; 335.65 through 335.68; 335.69 (except “and (n)” in (a) introductory paragraph, (i), and (n)); 335.70; 335.71; 335.73 through 335.75; 335.76 (except (h)); 335.77; 335.78(a); 335.78(b) (January 1, 1997); 335.78(c); 335.78(d) (except (d)(2)); 335.78(e) introductory paragraph (January 1, 1997); 335.78(e)(1) and (2); 335.78(f) (except 335.78(f)(2)); 335.78(f)(2) (January 1, 1997); 335.78(g) (except (g)(2)); 335.78(g)(2) (January 1, 1997); 335.78(h) through (j); 335.79;

Chapter 335, Subchapter D - Standards Applicable to Transporters of Hazardous Waste, Sections 335.91 (except (e)); 335.92; 335.93 (except (e)); 335.93(e) (December 31, 1999); 335.94;

Chapter 335, Subchapter E - Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities, Sections 335.111; 335.112 (except (a)(17)); 335.113; 335.115 through 335.128;

Chapter 335, Subchapter F - Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities, Sections 335.151 through 335.153; 335.155 (except 335.155(1)); 335.155(1) (40 TexReg 77, effective January 8, 2015 (August 22, 2014 proposed rule (39 TexReg 6376))); 335.156 through 335.179;

Chapter 335, Subchapter G - Location Standards for Hazardous Waste Storage, Processing, or Disposal, Sections 335.201(a) (except (a)(3)); 335.201(c); 335.202 introductory paragraph; 335.202(2), (4), (9) through (11), (13), and (15) through (18); 335.203; 335.204(a) introductory paragraph through (a)(5); 335.204(b)(1) through (6); 335.204(c)(1) through (5); 335.204(d)(1) through (5); 335.204(e) introductory paragraph; 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); 335.204(e)(2) through (e)(7); 335.204(f); 335.205(a) introductory paragraph through (a)(2) and (e);

Chapter 335, Subchapter H - Standards for the Management of Specific Wastes and Specific Types of Facilities, Sections 335.211(a) (40 TexReg 77, effective January 8, 2015); 335.211(b) and (c); 335.212 through 335.214; 335.221 through 335.225; 335.241(except (b)(4)); 335.251; 335.261 (except (b) introductory paragraph, (b)(6), (b)(15) and (e)); 335.261(b) introductory paragraph, (b)(6), and (b)(15) (40 TexReg 77, effective January 8, 2015 (August 22,

2014 proposed rule (39 TexReg 6376)); 335.271; 335.272;

Chapter 335, Subchapter O - Land Disposal Restrictions, Section 335.431 (except (c)(1); 335.431(c)(1) (39 TexReg 6376, effective August 22, 2014 (August 22, 2014 proposed rule (39 TexReg 6376)));

Chapter 335, Subchapter R - Waste Classification, Sections 335.504 (except 335.504(1)); 335.504(1) (40 TexReg 77, effective January 8, 2015 (August 22, 2014 proposed rule (39 TexReg 6376)));

Chapter 335, Subchapter U, Standards For Owners And Operators Of Hazardous Waste Facilities Operating Under A Standard Permit, Sections 601 and 602.

Copies of the Texas regulations that are incorporated by reference are available from Thomson Reuters, 610 Opperman Drive, Eagan, MN 55123; Phone: 1-888-728-7677; Web site: <http://legalsolutions.thomsonreuters.com>.

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