

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** June 20, 2008
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Grace Montgomery Faulkner, Director
Small Business and Environmental Assistance Division
Docket No.: 2007- 1928-RUL
Subject: Commission Approval for Rulemaking Adoption
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
Hazardous Household Waste Updates
Rule Project No. 2007-005-335-AD

Scope of the rulemaking:

This rulemaking will update the requirements for entities collecting household hazardous waste that is removed by households from the municipal solid waste stream. The rules are Subchapter N of Chapter 335. The old rules are repealed and replaced with new sections. The rulemaking does not affect the household hazardous waste rules in Chapter 332 Subchapter F that apply to composters of municipal solid waste.

Reasons for the rule package:

The revisions would update the hazardous household waste rules to reflect types of collections that have been developed since the rules were initially adopted in 1988, to put more emphasis on training and proper disposal to better meet the requirements of Texas Health and Safety Code §361.029(b), to reduce the amount of paperwork the hazardous household waste programs need to submit to the agency, and to require reports from programs on the amount of wastes collected so that accurate information can be provided to the Legislature.

Statutory Authority:

Texas Health and Safety Code §361.029 requires the commission to provide rules for persons to engage in activities that involve the collection and disposal of household hazardous waste and that specify training requirements for those involved in collections, and §361.429 requires the commission to establish standards for household hazardous waste collection programs.

Potentially controversial matters:

Under current processes and procedures in household hazardous waste collections, there are not significant issues with the program. Therefore, rule revisions modify the proposal for some things that were requested by stakeholders or that were raised in public comment on the proposal. The two issues that might be the most controversial are the following:

- The prohibition against hazardous household waste programs accepting hazardous waste from conditionally exempt small quantity generators (CESQGs) is retained, although some commentors requested this change before proposal and in public comment on the proposal. Like hazardous

Re: Docket No. 2007- 1928-RUL

household waste from households, CESQGs can dispose of their small amounts of hazardous waste in the normal municipal solid waste stream.

- In the response to comments, a statement is made that the commission will provide a guidance document on these rules. Several commenters asked that the rules require that stakeholder input be required to develop the guidance and that it be updated annually. To allow flexibility on how guidance is prepared, no specific procedure for producing the guidance was stated.

Public comment:

The commission received written comments from the Brazos Valley Solid Waste Management Agency, Philip Services Company, Inc., the City of Grand Prairie, Veolia ES Technical Solutions, L.L.C., Upper Trinity Regional Water District, the City of Austin, the City of San Marcos, Harris County, the City of Fort Worth, Houston-Galveston Area Council, Fort Bend County Engineering, Dallas County, and the City of Houston. The commission received oral comments from Dallas County, the City of Fort Worth, and Philip Services Company. The main issues in the public comment were the following:

- The revised rules do not allow collection programs to accept hazardous waste or Class 1 waste from conditionally exempt small quantity generators.
- The rules do not allow aggregated household hazardous waste to be hauled from collection events or permanent collection centers to a central facility for consolidation.
- Training for those working at collections needs to be based on their functions rather than generic for everyone. Certificates should not be required to document training.
- Guidance on the rules is needed and needs to be updated annually. Stakeholders should have input on the initial guidance and on revisions.
- The commission needs to keep the federal exclusion for household wastes not being considered hazardous waste.
- Permits for hazardous waste facilities do not specify whether the facilities can take household hazardous wastes.
- Codes for hazardous waste should not be required on manifests for household hazardous waste.
- Mobile collection units should not need separate sets of required safety equipment if they are used for a single collection event.
- Requiring written consent from a landowner for using his property for a hazardous household waste collection should not be required.

Significant changes from proposal:

All changes to the rules other than one typographic correction were made in response to comments. The most significant changes were the following:

Re: Docket No. 2007- 1928-RUL

- Clarification was added to explain that the addition of the phrasing “as if it were hazardous waste” in several parts of the rules, which gave some the perception that the federal exclusion for household wastes not being hazardous waste was being eliminated, pertains only to the applicability of other sections of Chapter 335 that were cited in the rules – those sections have provisions for hazardous waste but not household hazardous waste. To protect the public health and the environment, those requirements are intended to apply to aggregated household hazardous waste are the same as what was required in the previous rules.
- Several collection programs commented that codes for hazardous waste should not be required on manifests for shipping household hazardous waste. The rules do not require that these codes be used. Language to clarify was added in the Response to Comments.
- Several comments were received that multiple sets of safety equipment should not be required if multiple mobile collection units are used in a single collection event. This was changed based on comments.
- Several comments opposed the requirement that notifications have an attached letter from the landowner authorizing the use of the property for holding a collection of household hazardous waste. The agency will maintain the requirement to obtain the letter to document the landowners’ or their representatives’ acknowledgement of allowing collection activities involving hazardous materials. This documentation may be important in establishing liability for cleanup if their property becomes contaminated. However, based on comments, the rule is amended to allow for a letter from any authorized person at the site (i.e., expanded to include a landowner’s representative). The requirement to submit letters is expanded to apply to all notifications.
- The requirement to maintain certificates of training in §335.405(a)(9)(B) was changed to maintaining records of training because of comment that some training does not result in certificates.
- The proposed training requirements garnered significant public comment from the collection programs. Changes are made at adoption to limit the applicability of the major training requirements to after household hazardous waste is unloaded from household vehicles.
- To allow for submission of notifications via e-mail or fax, the requirement in §335.403(b) for submitting an original signed copy of a notification was changed to a signed copy. Because of concerns expressed in comments, a provision was added to §335.403(b)(3) that alternate dates for inclement weather, if planned, must be included in notifications.
- Based on comment, the rules are changed to allow consolidation of HHW between collection events, permanent collection centers, and collection programs to allow for cost savings related to having greater quantities transported from one site.
- Based on comments, the requirement that mobile collection units and point of generation pickup vehicles deliver collected household hazardous waste to an appropriate receiving facility was expanded to 72 hours.

Re: Docket No. 2007- 1928-RUL

- Antifreeze was added to the list of wastes that can be collected under the exclusion in §335.401(c)(1). Although antifreeze is normally not household hazardous waste, some collection programs may receive some antifreeze that is hazardous because of contamination.
- Because of concerns in comments that hazardous waste permits do not normally specify that treatment, storage, or disposal facilities can accept household hazardous waste, the phrase “with a permit authorizing the receipt of household hazardous waste” was removed from §335.417(a) and (b). Hazardous waste permits authorize the receipt of these wastes without explicitly stating so, but the language is not needed in this section.
- The phrase “or job functions” was added to §335.405(a)(9)(C)(iii)(VII) to provide flexibility to programs on how they assign staff during collections.
- Based on comments that 24 hours may not be sufficient time to conduct a one-day collection event if very large amounts of wastes are received, the reference to the proposed 24-hour period in the definition of “collection event” and elsewhere in the rules was changed to a 48-hour period.
- The training requirements in §335.407(d) are restricted only to individuals who handle aggregated household hazardous waste rather than those who initially receive the materials from the public or other collection programs.
- To resolve a conflict in the proposed rules between the definition of a mobile collection unit and the requirements to deliver collected household hazardous waste to a permanent collection center, a collection event, or a registered transporter’s facility (last option was in the definition but omitted elsewhere in the rules), provisions were added for delivery to registered transporters’ facilities.
- Based on comments, the deadline for submitting annual reports on wastes collected was extended to April 1st rather than February 1st for the previous calendar year.
- Three typographic errors in the proposed rules were corrected.

Key points in adoption rulemaking schedule:

***Texas Register* proposal publication date:** February 15, 2008

Six-month *Texas Register* filing deadline: August 1, 2008

Anticipated *Texas Register* publication date: July 25, 2008

Anticipated effective date: July 31, 2008

Agency contacts:

Joseph Thomas, Rule Project Manager, 239-0012, Small Business and Environmental Assistance
Division

Diane Goss, Staff Attorney, 239-5731

Michael Parrish, Texas Register Coordinator, 239-2548

Attachment: executive summary for proposal

Commissioners

Page 5

June 20, 2008

Re: Docket No. 2007- 1928-RUL

cc: Chief Clerk, 5 copies
Executive Director's Office
David C. Schanbacher, P.E.
Ashley K. Wadick
Daniel Womack
Zak Covar
Office of General Counsel
Joseph Thomas
Michael Parrish