

APPENDIX A

STATEWIDE RULE 98

“STANDARDS FOR MANAGEMENT OF HAZARDOUS OIL AND GAS WASTE”

(T.A.C. TITLE 16, PART I, CHAPTER 3, SECTION 3.98)

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TITLE 16. ECONOMIC REGULATION, PART I. RAILROAD COMMISSION OF TEXAS, CHAPTER 3. OIL AND GAS DIVISION, CONSERVATION RULES AND REGULATIONS

3.98 STANDARDS FOR MANAGEMENT OF HAZARDOUS OIL AND GAS WASTE

(a) Purpose. The purpose of this section is to establish standards for management of hazardous oil and gas waste.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil, gas, or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil, gas, or geothermal resources;

(iii) activities associated with natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Texas Natural Resources Code, § 91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Texas Natural Resources Code, § 91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph.

(2) Administrator--The administrator of the United States Environmental Protection Agency, or the administrator's designee.

(3) Authorized facility--Either:

(A) an authorized recycling or reclamation facility; or

(B) an authorized treatment, storage, or disposal facility.

(4) Authorized recycling or reclamation facility--A facility permitted in accordance with the requirements of 40 CFR Parts 270 and 124 or Part 271, if required, at which hazardous waste that is to be recycled or reclaimed is managed and whose owner or operator is subject to regulation under:

(A) 40 CFR, § 261.6(c) or an equivalent state program (concerning facilities that recycle recyclable materials); or

(B) 40 CFR, Part 266, Subparts C (concerning recyclable materials used in a manner constituting disposal), F (concerning recyclable materials used for precious metal recovery), or G (concerning spent lead-acid batteries being reclaimed), or an equivalent state program.

(5) Authorized representative--The person responsible for the overall operation of all or any part of a facility or generation site.

(6) Authorized treatment, storage, or disposal facility--A facility at which hazardous waste is treated, stored, or disposed of that:

(A) has received either:

(i) a permit (or interim status) in accordance with the requirements of 40 CFR, Parts 270 and 124 (EPA permit); or

(ii) a permit (or interim status) from a state authorized in accordance with 40 CFR, Part 271; and

(B) is authorized under applicable state or federal law to treat, store, or dispose of that type of hazardous waste. If a hazardous oil and gas waste is destined to a facility in an authorized state that has not yet obtained authorization from the EPA to regulate that particular hazardous waste, then the designated facility must be a facility allowed by the receiving state to accept such waste and the facility must have a permit issued by the EPA to manage that waste.

(7) Centralized Waste Collection Facility or CWCF--A facility that meets the requirements of subsection (m)(3) of this section.

(8) Certification--A statement of professional opinion based upon knowledge and belief.

(9) CFR--Code of Federal Regulations.

(10) CESQG--A conditionally exempt small quantity generator, as described in subsection (f)(1) of this section (relating to generator classification and accumulation time).

(11) Commission--The Railroad Commission of Texas or its designee.

(12) Container--Any portable device in which material is stored, transported, treated, disposed of, or otherwise handled.

(13) Contaminated media--Soil, debris, residues, waste, surface waters, ground waters, or other materials containing hazardous oil and gas waste as a result of a discharge or clean-up of a discharge.

(14) Department of Transportation or DOT--The United States Department of Transportation.

(15) Designated facility--An authorized facility that has been designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section (relating to general manifest requirements).

(16) Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(17) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(18) Disposal facility--A facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

(19) Elementary neutralization unit--A device consisting of a tank, tank system, container, transport vehicle, or vessel that is used for neutralizing wastes that are hazardous wastes:

(A) only because they exhibit the characteristic of corrosivity under the test referred to in subsection (e)(1)(D)(ii) of this section (relating to characteristically hazardous wastes); or

(B) they are identified in subsection (e)(1)(D)(i) of this section (relating to listed hazardous wastes) only because they exhibit the corrosivity characteristic.

(20) Empty container--A container or an inner liner removed from a container that has held any hazardous waste and that meets the requirements of 40 CFR, § 261.7(b).

(21) Environmental Protection Agency or EPA--The United States Environmental Protection Agency.

(22) EPA Acknowledgment of Consent--The cable sent to the EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(23) EPA hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 CFR, Part 261, Subpart D, and to each characteristic identified in 40 CFR, Part 261, Subpart C.

(24) EPA identification number or EPA ID Number--The number assigned by the EPA to each hazardous waste generator, transporter, and treatment, storage, or disposal facility.

(25) EPA Form 8700-12--The EPA form that must be completed and delivered to the commission in order to obtain an EPA ID number.

(26) Executive director of the TCEQ--The executive director of the TCEQ or the executive director's designee.

(27) Facility--All contiguous land, including structures, other appurtenances, and improvements on the land, used for recycling, reclaiming, treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof).

(28) Generate--To produce hazardous oil and gas waste or to engage in any activity (such as importing) that first causes a hazardous oil and gas waste to become subject to regulation under this section.

(29) Generation site--

(A) Excluding sites addressed in subparagraphs (B) (relating to pipelines) and (C) (relating to gas plants) of this paragraph, any of the following operational units that are owned or operated by one person and other sites at which hazardous oil and gas waste is generated or where actions first cause a hazardous oil and gas waste to become subject to regulation, including but not limited to:

(i) all oil and gas wells that produce to one set of storage or treatment vessels, such as a tank battery, the storage or treatment vessels, associated flowlines, and related land surface;

(ii) an injection or disposal site, that is not part of a generation site described in subparagraph (A)(i) of this paragraph, its related injection or disposal wells, associated injection lines, and related land surface;

(iii) an offshore platform; or

(iv) any other site, including all structures, appurtenances, or other improvements associated with that site that are geographically contiguous, but which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way.

(B) In the case of a pipeline system (other than a field flowline or injection line system), an equipment station (such as a pump station, breakout station, or compressor station) or any other location along a pipeline (such as a drip pot, pigging station, or rupture), together with any and all structures, other appurtenances, and improvements:

(i) that are geographically contiguous with or are physically related to an equipment station or other location described in this paragraph, but excluding any pipeline that connects two or more such stations or locations;

(ii) that are owned or operated by one person; and

(iii) at which hazardous oil and gas waste is produced or where actions first cause a hazardous oil and gas waste to become subject to regulation.

(C) A natural gas treatment or processing plant or a natural gas liquids processing plant.

(30) Generator--Any person, by generation site, whose act or process produces hazardous oil and gas waste or whose act first causes a hazardous oil and gas waste to become subject to regulation under this section, or such person's authorized representative.

(31) Geothermal energy and associated resources--Geothermal energy and associated resources as defined in Texas Natural Resources Code, § 141.003(4).

(32) Hazardous oil and gas waste--Any oil and gas waste determined to be hazardous under the provisions of subsection (e) of this section (relating to hazardous waste determination).

(33) Hazardous oil and gas waste constituent--A hazardous waste constituent of hazardous oil and gas waste.

(34) Hazardous waste--A hazardous waste, as defined in 40 CFR, § 261.3, including a hazardous oil and gas waste.

(35) Hazardous waste constituent--A constituent that caused the administrator to list a hazardous waste in 40 CFR, Part 261, Subpart D, or a constituent listed in table 1 of 40 CFR, § 261.24.

(36) International shipment--The transportation of hazardous oil and gas waste into or out of the jurisdiction of the United States.

(37) Land disposal--The placement in or on the land, except as otherwise provided in 40 CFR Part 268, including placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

(38) LQG--A large quantity generator, as described in subsection (f)(3) of this section (relating to generator classification and accumulation time).

(39) Management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(40) Manifest--The shipping document required pursuant to the provisions of subsection (o) of this section (relating to manifests).

(41) Manifest document number--The 12-digit identification number assigned to a generator by the EPA, plus a unique five-digit document number assigned to the manifest by the generator, or preprinted on the manifest, for recording and reporting purposes.

(42) Oil and gas waste--Waste generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, or the solution mining of brine. Until delegation of authority under RCRA to the commission by EPA, the term "oil and gas waste" shall exclude hazardous waste arising out of or incidental to activities associated with natural gas treatment or natural gas liquids processing plants and reservoir pressure maintenance or repressurizing plants.

(43) On-site--At the generation site.

(44) Operator--The person responsible for the overall operation of a facility.

(45) Owner--The person who owns a facility or part of a facility.

(46) P-5 operator number--The number assigned by the commission to each person who conducts any of the activities specified in § 3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements) within the State of Texas.

(47) Person--An individual, firm, joint stock company, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(48) Pressure maintenance plant or repressurizing plant--A plant for processing natural gas for reinjection (for reservoir pressure maintenance or repressurizing) in a natural gas recycling project. These terms do not include a compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system.

(49) Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR, Part 262, Subpart B, or equivalent state provision, that identifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(50) Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(51) Reclaim--To process to recover a usable product or to regenerate.

(52) Recycle--To beneficially use, reuse, or reclaim hazardous waste.

(53) Reportable quantity--The quantity of a hazardous substance released in a 24-hour period that must be reported under the provisions of 40 CFR, Part 117 (for spills to water) or Part 302 (any spill).

(54) Resource Conservation and Recovery Act or RCRA--The federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 USC § 6901, et seq.

(55) Reuse--To employ hazardous waste as an ingredient in an industrial process to make a product (other than recovery of distinct components of hazardous waste as separate end products) or effective substitution of hazardous waste for a commercial product used in a particular function or application.

(56) Sludge--Any solid, semi-solid, or liquid waste generated from a wastewater treatment plant or water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(57) Solid waste--Any waste identified in 40 CFR, § 261.2.

(58) Solution mined brine--Brine extracted from a subsurface salt formation through dissolution of salt in the formation.

(59) SQG--A small quantity generator, as described in subsection (f)(2) of this section (relating to generator classification and accumulation time).

(60) State--Any of the 50 states that compose the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(61) Storage--The holding of hazardous waste for a temporary period (excluding storage at the site of generation during the applicable accumulation time period specified in subsection (f) of this section), at the end of which the hazardous waste is recycled, reclaimed, treated, disposed of, or stored elsewhere.

(62) Tank--A stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

(63) Tank system--A tank and its associated ancillary equipment and containment system.

(64) TCEQ--The Texas Commission on Environmental Quality or its successor agencies.

(65) Totally enclosed treatment facility--A facility for the treatment of hazardous waste that is directly connected to an industrial production process and that is constructed and operated in a manner that prevents the release of any hazardous waste or hazardous waste constituent into the environment during treatment (e.g., a pipe in which waste acid is neutralized).

(66) Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(67) Transport vehicle--A motor vehicle or rail car used for the transportation of cargo. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

(68) Transportation--The movement of hazardous waste by air, rail, highway, or water.

(69) Transporter--A person engaged in the off-site transportation of hazardous waste.

(70) Treatment--Any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, to recover energy or material resources from the waste, or to render such waste non-hazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume. The term does not include any activity that might otherwise be considered treatment that is exempt from regulation under this section (such as neutralization of caustic or acidic fluids in an elementary neutralization unit).

(71) TCEQ-Form 0311--The TCEQ Uniform Hazardous Waste Manifest form. This form can be obtained from the commission.

(72) United States--The 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(73) Used Oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

(74) Vessel--Every description of watercraft used or capable of being used as a means of transportation on the water. The term does not include a structure that is or is designed to be, permanently affixed to one location, or a drilling or workover vessel that is stationary or fixed for the performance of its primary function.

(75) Waste--Any solid waste, as that term is defined in 40 CFR, § 261.2.

(76) Wastewater treatment unit--A device (such as a hydrostatic test water treatment unit) that:

(A) is a tank or tank system comprising part of a wastewater treatment facility that is subject to regulation under either §§ 402 or 307(b) of the Clean Water Act, 33 USC §§ 1342 or 1317(b); and

(B) receives and treats or stores an influent wastewater that is a hazardous waste, that generates and accumulates a wastewater treatment sludge that is a hazardous waste, or treats or stores a wastewater treatment sludge that is a hazardous waste.

(77) Water (bulk shipment)--The bulk transportation of hazardous waste that is loaded or carried on board a vessel without containers or labels.

(c) Applicability.

(1) General.

(A) This section applies to any person who generates hazardous oil and gas waste and to any person who transports hazardous oil and gas waste.

(B) An owner or operator of a treatment, storage, or disposal facility regulated by the TCEQ's industrial and hazardous waste program, shall be subject to the standards for generators of hazardous waste found in Title 30, Texas Administrative Code, Chapter 335, Subchapter C (TCEQ standards for generators) if the facility generates a new waste that contains hazardous oil and gas waste and waste regulated by the TCEQ's industrial and hazardous waste program.

(2) Requirements Cumulative. The provisions of this section are in addition to applicable provisions contained in any other section, order, policy, rule, or statutory

authority of the commission. In the event of a conflict between this section and any other section, order, policy, or rule of the commission, this section shall control.

(d) General Prohibitions. No person may cause, suffer, allow, or permit the collection, handling, storage, transportation, treatment, or disposal of hazardous oil and gas waste in a manner that would violate the provisions of this section.

(e) Hazardous Waste Determination.

(1) Determination. A person who generates a waste shall determine if such waste is hazardous oil and gas waste as provided in this subsection. A hazardous oil and gas waste is a waste that::

(A) is defined in subsection (b) of this section (relating to definitions) as an oil and gas waste;

(B) is not described in 40 CFR, § 261.4(a) (which describes wastes that are not considered solid wastes);

(C) is not described in 40 CFR, § 261.4(b) (which describes solid wastes that are exempt from regulation under RCRA Subtitle C); and

(D) is identified as a hazardous waste either:

(i) in 40 CFR, Part 261, Subpart D (regarding listed hazardous wastes);

or

(ii) in 40 CFR, Part 261, Subpart C (regarding characteristically hazardous wastes), as determined either:

(I) by testing the waste:

(-a-) in accordance with methods described in 40 CFR, Part 261, Subpart C; or

(-b-) in accordance with an equivalent method approved by the administrator under 40 CFR, § 260.21; or

(II) by applying knowledge of the hazard characteristics of the waste in light of the materials or processes used.

(2) Land Ban. Each LQG and SQG shall determine whether the hazardous oil and gas waste it generates is prohibited from land disposal under the provisions of 40 CFR, Part 268. If the waste is prohibited from land disposal, the LQG or SQG must comply with all applicable provisions of 40 CFR, Part 268 (concerning management of land ban wastes) prior to disposing of such waste.

(3) Exclusions and Exemptions.

(A) Notwithstanding the provisions of subsection (e)(1) of this section, in the event the administrator determines, in accordance with the provisions of 40 CFR, § 260.22, that a particular oil and gas waste that is considered a hazardous oil and gas waste because it meets criteria set out in subsection (e)(1)(D)(i) of this section (relating to listed hazardous wastes) should not be considered a hazardous waste, such waste shall be exempt from regulation under this section.

(B) Notwithstanding the provisions of subsection (e)(1) of this section the following are exempt from regulation under this section:

(i) any oil and gas waste described in 40 CFR, § 261.6(a)(2) (concerning recyclable materials) that is managed as provided in applicable provisions of 40 CFR, Part 266, Subparts C-H, and 40 CFR, Parts 270 and 124;

(ii) any oil and gas waste described and recycled, reclaimed, or reused as provided in 40 CFR, § 261.6(a)(3) (concerning recyclable materials);

(iii) used oil that is not considered a hazardous waste under the provisions of 40 CFR, § 279.10(b) and that is managed as provided in 40 CFR, Part 279;

(iv) dielectric fluid containing polychlorinated biphenyls (PCBs) and electric equipment containing such fluid that are regulated under 40 CFR, Part 761 and that are hazardous only because they exhibit the characteristic of toxicity for D018-D043 under the test required under subsection (e)(1)(D)(ii) of this section (relating to characteristically hazardous wastes);

(v) debris, as that term is defined in 40 CFR, § 268.2, that is an oil and gas waste:

(I) that contains or contained a hazardous oil and gas waste listed in 40 CFR, Part 261, Subpart D or that exhibits or exhibited a hazardous waste characteristic identified in 40 CFR, Part 261, Subpart C; and

(II) that has been treated using one of the required destruction technologies specified in Table 1 of 40 CFR, § 268.45 or that is determined by the administrator to be no longer contaminated with hazardous oil and gas waste; and

(vi) hazardous oil and gas waste remaining in an empty container.

(f) Generator Classification and Accumulation Time.

(1) Conditionally Exempt Small Quantity Generator.

(A) To be classified as a conditionally exempt small quantity generator (CESQG) during any calendar month, a generator of hazardous oil and gas waste must:

(i) generate no more than 100 kilograms (220.46 pounds) of hazardous oil and gas waste in that calendar month; and

(ii) accumulate no more than 1,000 kilograms (2204.60 pounds) of hazardous oil and gas waste on-site at any one time.

(B) Except as provided in subsection (f)(5) of this section, a CESQG must comply with all requirements of this section applicable to CESQGs.

(C) If a CESQG generates in one calendar month, or accumulates on-site at any one time, more than a total of one kilogram (2.20 pounds) of any acute hazardous waste listed in 40 CFR, §§ 261.31, 261.32 or 261.33(e) or a total of 100 kilograms (220.46 pounds) of contaminated media resulting from the clean up of a discharge into or on any land or water of any acute hazardous waste listed in 40 CFR, §§ 261.31, 261.32, or 261.33(e), all such acute hazardous wastes must be managed as though generated by an LQG. The LQG accumulation time period for such acute hazardous wastes shall begin at such time as the maximum quantity specified in this subparagraph is exceeded.

(2) Small Quantity Generator.

(A) To be classified as a small quantity generator (SQG) in any calendar month, a generator of hazardous oil and gas waste must:

(i) generate less than 1,000 kilograms (2204.60 pounds) of hazardous oil and gas waste in that calendar month;

(ii) not allow any particular quantity of hazardous oil and gas waste to remain on-site for a period of more than:

(I) 180 days from the date that particular quantity was generated; or

(II) 270 days from the date that particular quantity was generated, but only if the waste must be transported or offered for transport to a treatment, storage, or disposal facility that is located a distance of 200 miles or more from the point of generation; and

(iii) not accumulate more than 6,000 kilograms (13,227.60 pounds) of hazardous oil and gas waste on-site at any one time.

(B) An SQG must accumulate all hazardous oil and gas waste in tanks or containers that meet the requirements of this section and, except as provided in subsection (f)(5) of this section, comply with all requirements of this section applicable to SQGs.

(C) The accumulation period specified in subsection (f)(2)(A)(ii) of this section may be extended an additional 30 days if the commission, at its sole discretion, determines that unforeseen, temporary, and uncontrollable circumstances require that hazardous oil and gas waste remain on-site for a longer time period.

(3) Large Quantity Generators.

(A) Any generator of hazardous oil and gas waste not classified as a CESQG or SQG is classified as a large quantity generator (LQG).

(B) An LQG must accumulate hazardous oil and gas waste in tanks or containers that meet the requirements of this section and, except as provided in

subsection (f)(5) of this section, comply with all other requirements of this section applicable to LQGs.

(C) An LQG shall not accumulate any particular quantity of hazardous oil and gas waste on-site for more than 90 days from the date that particular quantity was generated, unless an extension to such 90-day period has been granted in accordance with the provisions of subsection (f)(4)(D) of this section.

(D) The 90-day accumulation period specified in subsection (f)(4)(C) of this section may be extended an additional 30 days if the commission, at its sole discretion, determines that unforeseen, temporary, and uncontrollable circumstances require that hazardous oil and gas waste remain on-site for longer than 90 days.

(4) Accumulation in Containers at the Point of Generation.

(A) *(See note below)* Notwithstanding the foregoing provisions of subsection (f) of this section, an LQG or SQG may accumulate in containers up to 55 gallons of hazardous oil and gas waste or a total of one quart of acute hazardous wastes listed in 40 CFR, § 261.33(e) without having to manage such hazardous oil and gas waste in accordance with the accumulation time limits applicable to LQGs or SQGs or with the provisions of subsections (q) (relating to preparedness and prevention), (r) (relating to contingency plan and emergency procedures), (s) (relating to personnel training), (t) (relating to standards for use of containers), and (u) (standards for use of tank systems) of this section, provided that the requirements of subsection (f)(4)(B) of this section are met.

(B) All hazardous oil and gas waste subject to the exemption of subsection (f)(4)(A) of this section must be accumulated in containers that:

(i) are at a location that is:

(I) under the control of the generator; and

(II) at or near the point of generation;

Note: 3.98(f)(4)(A) references to other subsections contain typographical errors and should read as follows:

(A) *Notwithstanding the foregoing provisions of subsection (f) of this section, an LQG or SQG may accumulate in containers up to 55 gallons of hazardous oil and gas waste or a total of one quart of acute hazardous wastes listed in 40 CFR, § 261.33(e) without having to manage such hazardous oil and gas waste in accordance with the accumulation time limits applicable to LQGs or SQGs or with the provisions of subsections (h) (relating to preparedness and prevention), (i) (relating to contingency plan and emergency procedures), (j) (relating to personnel training), (k) (relating to standards for use of containers), and (l) (standards for use of tank systems) of this section, provided that the requirements of subsection (f)(4)(B) of this section are met.*

(ii) meet the applicable requirements of 40 CFR, §§ 265.171, 265.172, and 265.173(a) (concerning container condition, compatibility of waste with container, and closing containers); and

(iii) are marked with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(C) If the amount of hazardous waste accumulated on-site at or near the point of generation exceeds the maximum amount specified in subsection (f)(4)(A) of this section, the generator must, with respect to such excess waste, comply with all applicable provisions of this section within three days of the date that such maximum amount is exceeded.

(5) Episodic Generation. Except as otherwise provided in this paragraph, if a generator's classification varies from one month to another, the hazardous oil and gas waste generated during any particular month shall be managed in accordance with the requirements applicable to the generator's classification for that month.

(A) If hazardous oil and gas waste generated by a generator who is classified as a CESQG during a particular month is mixed with waste generated in a month during which the generator is considered an LQG, the mixture shall be managed in accordance with the standards applicable to LQGs.

(B) If hazardous oil and gas waste generated by a generator who is classified as a CESQG during a particular month is mixed with waste generated in a month during which the generator is considered an SQG, the mixture shall be managed in accordance with the standards applicable to SQGs.

(C) If hazardous oil and gas waste generated by a generator who is classified as an SQG during a particular month is mixed with waste generated in a month during which the generator is considered an LQG, the mixture shall be managed in accordance with the standards applicable to LQGs.

(g) Notification. A person who is considered an LQG or SQG under the provisions of this section must notify the commission of the activities of such person that are subject to the provisions of this section and obtain an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the commission. Such notification must be made upon the later of 90 days after the effective date of this section or within ten days of the date that the LQG or SQG becomes subject to the provisions of this section.

(h) Preparedness and Prevention.

(1) General. In addition to all other applicable requirements of this section, all generators of hazardous oil and gas waste shall employ reasonable and appropriate measures (considering the nature and location of the facility and the types and quantities of hazardous oil and gas waste maintained at the site) in the operation and maintenance of his or her generation site to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous oil and gas

wastes or hazardous oil and gas waste constituents to air, soil, or surface water that could threaten human health or the environment.

(2) LQGs and SQGs. LQGs and SQGs who accumulate hazardous oil and gas waste at the generation site must comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart C (concerning preparedness and prevention).

(i) Contingency Plan and Emergency Procedures.

(1) LQGs. LQGs who accumulate hazardous oil and gas waste at the generation site must comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart D (concerning contingency plan and emergency procedures).

(2) SQGs. SQGs who accumulate hazardous oil and gas waste at the generation site must comply with the provisions of 40 CFR, § 262.34(d)(5) (concerning emergency response).

(j) Personnel Training. LQGs who accumulate hazardous oil and gas waste at the generation site must comply with the provisions applicable to owners or operators of 40 CFR, § 265.16 (concerning personnel training).

(k) Standards for Use of Containers.

(1) LQGs. LQGs accumulating hazardous oil and gas waste in containers must:

(A) comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart I (concerning use and management of containers);

(B) clearly mark each container being used to accumulate hazardous oil and gas waste on-site, in a manner and location visible for inspection, with the date accumulation of such hazardous oil and gas waste begins; and

(C) clearly label or mark each container being used to accumulate hazardous oil and gas waste on-site with the words "Hazardous Waste."

(2) SQGs. SQGs accumulating hazardous oil and gas waste in containers must:

(A) comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart I, except § 265.176 (concerning distance from property lines);

(B) clearly mark each container being used to accumulate hazardous oil and gas waste on-site, in a manner and location visible for inspection, with the date accumulation of such hazardous oil and gas waste begins; and

(C) clearly label or mark each container being used to accumulate hazardous oil and gas waste on-site with the words "Hazardous Waste."

(3) CESQGs. The provisions of this paragraph apply to CESQGs only.

(A) Hazardous oil and gas waste generated by a CESQG may be mixed with non-hazardous waste even though the resultant mixture exceeds the quantity limitations of subsection (f)(1) of this section, unless the mixture exhibits any of the hazardous waste characteristics of the hazardous oil and gas waste in the mixture, as determined under subsection (e)(1)(D)(ii) of this section.

(B) If a CESQG's wastes are mixed with used oil, the mixture is subject to the requirements *(of)* 40 CFR, Part 279 if the mixture is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

(l) Standards for Use of Tank Systems.

(1) LQGs. LQGs accumulating hazardous oil and gas waste in tanks must:

(A) comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart J, except § 265.197(c) and § 265.200;

(B) comply with the provisions applicable to owners or operators of 40 CFR, § 265.111 and § 265.114 (concerning closure performance standards and disposal of contaminated equipment and media); and

(C) clearly label or mark each tank being used to accumulate hazardous oil and gas waste with the words "Hazardous Waste."

(2) SQGs. SQGs accumulating hazardous oil and gas waste in tanks must:

(A) comply with the provisions of 40 CFR, § 265.201 (concerning accumulation of waste in tanks by small quantity generators); and

(B) clearly label or mark each tank being used to accumulate hazardous oil and gas waste with the words "Hazardous Waste."

(m) Disposition of Hazardous Oil and Gas Waste.

(1) On-site Treatment, Storage, Disposal, Recycling, and Reclamation.

Except as otherwise specifically provided in this section, no person may treat, store, dispose of, recycle, or reclaim any hazardous oil and gas waste on-site.

(2) Transport to Authorized Facility.

(A) Except as otherwise specifically provided in this section and subject to all other applicable requirements of state or federal law, a generator of hazardous oil and gas waste must send his or her waste to one of the following categories of facilities for treatment, storage, disposal, recycling, or reclamation:

(i) an authorized recycling or reclamation facility;

(ii) an authorized treatment, storage, or disposal facility;

(iii) a facility located outside the United States, provided that the requirements of subsection (v)(1) of this section (relating to exports of hazardous waste) are met;

(iv) a transfer facility, provided that the requirements of subsection (w)(3) of this section are met;

(v) if the waste is generated by a CESQG, a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(vi) if the waste is generated by a CESQG, a centralized waste collection facility (CWCF) that meets the requirements of subsection (m)(3) of this section.

(B) Notwithstanding any contrary provision of this subsection, hazardous oil and gas wastes may be treated or stored on-site in an elementary neutralization unit or a totally enclosed treatment facility. If a hazardous oil and gas waste that is ignitable under 40 CFR, § 261.21 (other than DOO1 High TOC Subcategory wastes defined in 40 CFR, § 268.42, Table 2) or that is corrosive under 40 CFR, § 261.22 is being treated in an elementary neutralization unit or a wastewater treatment unit to remove the characteristic before land disposal, the owner or operator must comply with the requirements of 40 CFR, § 264.17(b).

(C) While waste is being accumulated on-site in accordance with the provisions of subsection (f) of this section, a generator may treat hazardous oil and gas waste on-site in tanks or containers that comply with the applicable provisions of subsections (k) and (l) of this section.

(D) For purposes of § 3.8(f)(1)(C)(vi) of this title (relating to Water Protection), the manifest for shipment of hazardous oil and gas waste to a designated facility (a facility designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section) shall be deemed commission authorization for disposal at a facility permitted by another agency or another state.

(3) Centralized Collection of Hazardous Oil and Gas Waste.

(A) Centralized Waste Collection Facility. Provided that the requirements of this paragraph are met, a person may maintain at a CWCF hazardous oil and gas waste that is generated:

(i) by that person; and

(ii) at sites where that person is considered a CESQG under the provisions of this section.

(B) Prior to receipt of oil and gas hazardous waste generated off-site, a person who operates a CWCF must register with the commission by filing with the commission a notice that includes the following information:

(i) a map showing the location of the CWCF and each individual hazardous oil and gas waste generation site that may contribute waste to the collection facility. In lieu a map, the person who operates the CWCF may provide to the commission the name and lease number, field name and number, or other identifying information acceptable to the commission, of the CWCF and each generation site that may contribute waste to the collection facility;

(ii) the person's P-5 operator number; and

(iii) the EPA ID number for the CWCF, if any.

(C) All hazardous oil and gas waste received at the CWCF must be kept in closed containers that are marked with the words "Hazardous Waste."

(D) A person operating a CWCF shall not maintain at the CWCF at any one time more than 5,000 kilograms of hazardous oil and gas waste or more than five quarts of any hazardous oil and gas waste that is listed in 40 CFR, § 261.33(e) (acute hazardous waste).

(n) EPA ID Numbers.

(1) Generators. No LQG or SQG may transport or offer for transportation any hazardous oil and gas waste until such generator has obtained an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the commission.

(2) Transporters. No LQG or SQG may allow his or her hazardous oil and gas waste to be transported by a transporter that does not have an EPA ID number.

(3) Treatment, Storage, or Disposal Facilities. Except in the case of facilities specified in subsection (m)(2)(A)(iii), (vi), and (v) of this section, no LQG or SQG may send his or her hazardous oil and gas waste to a treatment, storage, or disposal facility unless that facility:

(A) is a designated facility as defined in this section; and

(B) has an EPA ID number.

(o) Manifests.

(1) General Requirements.

(A) Except as provided in subsection (o)(1)(E) of this section, each time an LQG or SQG transports hazardous oil and gas waste or offers hazardous oil and gas waste for transportation to an authorized facility, such generator must prepare a manifest form. If the waste was generated in the State of Texas and is being

transferred to an authorized facility located within the State of Texas, the generator shall use the form prescribed by the TCEQ. If the authorized facility is located outside the State of Texas, the generator must refer to subsection (o)(2) of this section to determine which manifest form to use.

(B) The generator must specify on the manifest one authorized facility to handle the hazardous oil and gas waste described on the manifest (the "primary designated facility").

(C) The generator may also specify on the manifest one alternate authorized facility to handle the hazardous oil and gas waste (the "alternate designated facility") in the event an emergency prevents delivery of the hazardous oil and gas waste to the primary designated facility.

(D) If the transporter is unable to deliver the hazardous oil and gas waste to the primary designated facility or the alternate designated facility, the generator must either specify another authorized facility to which the hazardous oil and gas waste can be delivered or instruct the transporter to return the hazardous oil and gas waste to the generator. If the generator specifies another authorized facility to which the hazardous oil and gas waste can be delivered, the generator shall instruct the transporter to revise the manifest to show this facility as the designated facility (see subsection (w)(6) of this section relating to transporter's inability to deliver waste).

(E) An SQG is not required to comply with the provisions of this subsection (relating to manifests) if:

(i) the SQG's hazardous oil and gas waste is reclaimed under a contractual agreement (the "hazardous waste reclamation agreement") pursuant to which:

(I) the type of hazardous oil and gas waste and frequency of shipments are specified in the agreement; and

(II) the vehicle used to transport the hazardous oil and gas waste to the hazardous waste reclamation facility and to deliver regenerated material back to the generator is owned and operated by the hazardous waste reclamation facility;

(ii) the SQG maintains a copy of the hazardous waste reclamation agreement in his or her files for a period of at least three years after termination or expiration of the reclamation agreement; and

(iii) the SQG complies with the provisions of 40 CFR, § 268.7(a)(10) (concerning land ban wastes subject to tolling agreements) if the waste is determined to be prohibited from land disposal under subsection (e)(2) of this section (relating to land ban wastes).

(2) Manifests Required for Out-of-State Domestic Shipments.

(A) If the hazardous oil and gas waste was generated within the United States, but outside the State of Texas, and is being transported to an authorized facility located within the State of Texas, the generator must use the form prescribed by the TCEQ.

(B) If the hazardous oil and gas waste was generated within the State of Texas and is being transported to an authorized facility located within the United States but outside the State of Texas (the "consignment state"), the manifest specified by the consignment state shall be used. If the consignment state does not specify a particular manifest form for use, then the generator shall use the form prescribed by the TCEQ.

(3) Number of Copies. The manifest must consist of at least the number of copies that will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and one additional copy to be returned to the generator by the owner or operator of the designated facility to which the waste was delivered (in accordance with the provisions of 40 CFR, § 264.71 and § 265.71, or state equivalent).

(4) Use of the Manifest.

(A) The generator must:

(i) sign the manifest certification by hand;

(ii) obtain the handwritten signature of the initial transporter and date of acceptance of the shipment by the initial transporter on the manifest;

(iii) retain one copy of the manifest signed by the initial transporter until the copy signed by the operator of the designated facility (in accordance with 40 Code of Federal Regulations § 264.71, § 265.71, or state equivalent) is received;

(iv) give the transporter the remaining copies of the manifest; and

(v) obtain one copy of the manifest, signed by the owner or operator of the designated facility that received the hazardous oil and gas waste, and retain that copy for three years from the date the hazardous oil and gas waste was accepted for shipment by the initial transporter.

(B) For shipments of hazardous oil and gas waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest, dated and signed in accordance with the provisions of paragraph (4)(A) of this subsection (relating to use of the manifest), to either:

(i) the owner or operator of the designated facility; or

(ii) if exported by water, the last water transporter expected to handle the hazardous oil and gas waste in the United States. Copies of the manifest are not required for each transporter.

(C) For rail shipments of hazardous oil and gas waste within the United States that originate at the generation site, the generator must send at least three copies of the manifest, dated and signed in accordance with the provisions of paragraph (4)(A) of this subsection (relating to use of the manifest), to:

(i) the next non-rail transporter, if any;

(ii) the designated facility, if transported solely by rail; or

(iii) if exported by rail, the last rail transporter expected to handle the hazardous oil and gas waste in the United States.

(D) For shipments of hazardous oil and gas waste to a designated facility located outside the State of Texas and in an authorized state that has not yet obtained authorization from the EPA to regulate that particular waste as hazardous, the generator must determine that the owner or operator of the designated facility agrees to sign and return the manifest to the generator (in accordance with the applicable provisions of 40 CFR, § 264.71 or § 265.71), and that any out-of-state transporter agrees to comply with the applicable requirements of subsection (w)(4) of this section (relating to manifest requirements for transporters).

(p) Packaging. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, an LQG or SQG must package the hazardous oil and gas waste in accordance with the applicable DOT packaging regulations set out in 49 CFR, Parts 173, 178, and 179.

(q) Labeling. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must label each package that contains hazardous oil and gas waste in accordance with the applicable DOT regulations set out in 49 CFR, Part 172.

(r) Marking.

(1) General. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must mark each package that contains hazardous oil and gas waste in accordance with the applicable DOT regulations set out in 49 CFR, Part 172.

(2) Non-Bulk Packaging. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must mark each package that contains hazardous oil and gas waste and is of a size specified in 40 CFR, § 262.32(b) (110 gallons or less), with the following words and information. Such words and information must be displayed in accordance with the applicable requirements of 49 CFR, § 172.304. The generator must include his or her name and address and the manifest document number in the appropriate space: HAZARDOUS WASTE--Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency. Generator's

Name _____ and Address: _____ Manifest Document
Number: _____

(s) Placarding. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must placard the vehicle or vehicles used to transport such hazardous oil and gas waste, or offer to the initial transporter the appropriate placards. Appropriate placards shall be determined according to DOT regulations set out in 49 CFR, Part 172, Subpart F.

(t) Recordkeeping.

(1) Waste Determination. Each LQG and SQG shall keep records of any and all test results, waste analyses, or other determinations made in accordance with subsection (e) of this section (relating to hazardous waste determination), for at least three years from the date that the waste was last sent to an authorized facility.

(2) Annual Reports. A copy of all reports required in subsection (u)(1) of this section (relating to annual reports), shall be retained by the generator for a period of at least three years from the due date of the report.

(3) Exception Reports. A copy of all reports required under subsection (u)(2) of this section (relating to exception reports), shall be retained by the generator for a period of at least three years from the due date of the report.

(4) Inspection Reports. A copy of each inspection report required under this section shall be retained by the generator for a period of at least three years from the due date of the report.

(5) Extension. The periods of record retention specified in subsection (t)(1)-(4) of this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or upon request by the commission.

(u) Reporting.

(1) Annual Reports. Any generator who is classified as an LQG or SQG during any calendar month of a calendar year shall prepare and submit a single copy of an annual report to the commission on the annual reporting form prescribed by the commission, Form H-21. The report shall be filed on or before the first day of March of the following calendar year and shall be accompanied by the fee assessed under the provisions of subsection (z) of this section. The annual report shall contain a certification signed by the generator. The annual report shall cover activities occurring at the generation site during the month(s) of the reporting year that the site was classified as a small or large quantity generation site, and must include the following information:

(A) the name of the generator followed by the generator's P-5 operator number in parentheses, the EPA ID number for the generation site, and the address of

the generation site or other site-identifying information (such as the lease number, unit number, or T-4 number (in the case of pipelines));

(B) the calendar year covered by the report;

(C) the name, EPA ID number, if any, and address for each authorized facility within the United States to which hazardous oil and gas waste was shipped during the year;

(D) the name and EPA ID number of each transporter used during the year for shipments to an authorized facility within the United States;

(E) a description, EPA hazardous waste number (from 40 CFR, Part 261, Subpart C or D), United States DOT hazard class, and quantity of each hazardous oil and gas waste shipped to an authorized facility within the United States. This information must be listed by the EPA ID number of each facility to which hazardous oil and gas waste was shipped. If the waste was shipped to an authorized facility that does not have an EPA ID number, the type of facility (reclamation or recycling) must be designated on the report;

(F) a description of the efforts undertaken during the year to reduce the volume and toxicity of hazardous oil and gas waste generated; and

(G) a description of the changes in volume and toxicity of hazardous oil and gas waste actually achieved during the year in comparison to previous years, to the extent such information is available.

(2) Exception Reports.

(A) An LQG who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days from the date the hazardous oil and gas waste was accepted by the initial transporter for shipment must contact the transporter and, if necessary, the owner or operator of the designated facility to determine the status of the hazardous oil and gas waste shipment.

(B) An LQG must submit an exception report to the commission if he or she has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days from the date the hazardous oil and gas waste was accepted by the initial transporter for shipment. The exception report must include:

(i) a legible copy of the manifest for that shipment of hazardous oil and gas waste for which the generator does not have confirmation of delivery; and

(ii) a letter signed by the generator explaining the efforts taken to locate the hazardous oil and gas waste and the results of those efforts.

(C) An SQG who does not receive confirmation of delivery of hazardous oil and gas waste by receipt of a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days from the date the hazardous oil and gas waste was accepted by the initial transporter for shipment, must submit to the commission an exception report. The exception report must include:

(i) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) a notation, either typed or handwritten, indicating that the generator has not received confirmation of delivery of the shipment to the designated facility.

(D) In the case of interstate shipments of hazardous oil and gas waste for which a manifest has not been returned within 45 days of acceptance of the hazardous oil and gas waste for shipment by the initial transporter, an LQG or SQG shall notify the appropriate regulatory agency of the state in which the designated facility is located, and the appropriate regulatory agency of each state in which the shipment may have been delivered, that the manifest has not been received. If a state required to be notified under this section has not received interim or final authorization pursuant to the RCRA, the LQG or SQG shall notify the administrator that the manifest has not been returned.

(3) Additional Reporting. The commission may require any generator of hazardous oil and gas waste to furnish additional reports concerning the quantities and disposition of hazardous oil and gas waste generated.

(v) Additional Requirements Applicable to International Shipments.

(1) Exports.

(A) Any person who exports hazardous oil and gas waste to a foreign country must comply with the requirements of 40 CFR, Part 262, Subpart E.

(B) Primary exporters of hazardous oil and gas waste generated within the State of Texas must submit to the commission a copy of the annual report submitted to the administrator in compliance with 40 CFR, § 262.56.

(2) Imports. Any person who imports hazardous oil and gas waste generated outside the United States into the State of Texas shall be considered the generator of such hazardous oil and gas waste for the purposes of this section. Such person must comply with the applicable provisions of this section, except that:

(A) the name and address of the foreign generator and the importer's name, address, and EPA ID number shall be substituted on the manifest in place of the generator's name, address, and EPA ID number;

(B) the importer or the importer's agent must sign and date the certification and obtain the signature of the initial transporter in place of the generator's certification statement on the manifest; and

(C) the importer shall use the manifest form prescribed by the TCEQ.

(w) Standards Applicable to Transporters of Hazardous Oil and Gas Waste.

The following standards apply to persons who transport hazardous oil and gas waste generated by LQGs and SQGs. The requirements of this subsection do not apply in the case of hazardous oil and gas waste generated by CESQGs.

(1) Scope.

(A) This subsection establishes standards for persons transporting hazardous oil and gas waste from the generation site to any designated facility. The provisions of this section do not apply with respect to on-site movements of hazardous oil and gas waste.

(B) In addition to the provisions of this subsection, a transporter must comply with standards applicable to generators of hazardous oil and gas waste if he or she mixes hazardous oil and gas wastes of different DOT shipping descriptions by placing them into a single container. If a transporter mixes a hazardous oil and gas waste with a hazardous waste that is not considered a hazardous oil and gas waste, the transporter must comply with the standards applicable to generators of hazardous wastes found at Title 30, Texas Administrative Code, Chapter 335, Subchapter C (the TCEQ's standards for generators of hazardous waste).

(2) Permits and EPA ID Numbers. No transporter may transport hazardous oil and gas waste unless he or she has an EPA ID number. The transporter may obtain an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the appropriate regulatory entity (either EPA, TCEQ, the commission, or another state).

(3) Transfer Facility Requirements. No transporter may store manifested hazardous oil and gas waste at a transfer facility for any period of time unless:

(A) the hazardous oil and gas waste is packaged in containers that meet the requirements of subsection (p) of this section (relating to packaging); and

(B) the hazardous oil and gas waste is stored at the transfer facility for no longer than ten days.

(4) Manifest Requirements.

(A) A transporter may not accept hazardous oil and gas waste for shipment from a generator unless it is accompanied by a manifest signed in accordance with the provisions of subsection (o)(4) of this section (relating to use of the manifest).

(B) Before transporting hazardous oil and gas waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous oil and gas waste from the generator. The transporter must return a signed copy of the manifest to the generator before leaving the generation site.

(C) The transporter must ensure that the manifest accompanies the shipment of hazardous oil and gas waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent is attached to the manifest.

(D) A transporter may not accept hazardous oil and gas waste for export from a primary exporter or other person if:

(i) the transporter knows that the shipment does not conform to the EPA Acknowledgment of Consent; or

(ii) except in the case of shipments by rail, an EPA Acknowledgment of Consent is not attached to the manifest (or shipping paper in the case of exports by water (bulk shipment)).

(E) A transporter who delivers a hazardous oil and gas waste to another transporter or to the designated facility must:

(i) obtain the date of delivery and the handwritten signature of the other transporter or of the owner or operator of the designated facility on the manifest;

(ii) retain one copy of the manifest in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping); and

(iii) give the remaining copies of the manifest to the accepting transporter or owner or operator of the designated facility.

(F) The requirements of subsection (w)(4)(C), (D), (E), and (G) of this section do not apply to water (bulk shipment) transporters if:

(i) the hazardous oil and gas waste is delivered by water (bulk shipment) to the designated facility;

(ii) a shipping paper containing all the information required on the manifest (excluding the EPA ID numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent, accompanies the hazardous oil and gas waste;

(iii) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;

(iv) the person delivering the hazardous oil and gas waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(v) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping).

(G) For shipments involving rail transportation, the requirements of subsection (w)(4)(C), (D), (E), and (F) of this section do not apply and the following requirements do apply:

(i) when accepting hazardous oil and gas waste from a non-rail transporter, the initial rail transporter must:

(I) sign and date the manifest acknowledging acceptance of the hazardous oil and gas waste;

(II) return a signed copy of the manifest to the non-rail transporter;

(III) forward at least three copies of the manifest to:

(-a-) the next non-rail transporter, if any;

(-b-) the designated facility, if the shipment is delivered to that facility by rail; or

(-c-) the last rail transporter designated to handle the hazardous oil and gas waste in the United States; and

(IV) retain one copy of the manifest and rail shipping paper in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping);

(ii) rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA ID numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent, accompanies the hazardous oil and gas waste at all times;

(iii) when delivering hazardous oil and gas waste to the designated facility, a rail transporter must:

(I) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(II) retain a copy of the manifest or signed shipping paper in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping);

(iv) when delivering hazardous oil and gas waste to a non-rail transporter, a rail transporter must:

(I) obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(II) retain a copy of the manifest in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping);

(v) before accepting hazardous oil and gas waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(H) Transporters who transport hazardous oil and gas waste out of the United States must:

(i) indicate on the manifest the date the hazardous oil and gas waste left the United States;

(ii) sign the manifest and retain one copy in accordance with the provisions of subsection (v)(1) of this section;

(iii) return a signed copy of the manifest to the generator; and

(iv) give a copy of the manifest to a United States customs official at the point of departure from the United States.

(I) A transporter accepting hazardous oil and gas waste for shipment from an SQG need not comply with the requirements of subsection (w)(4) and (7) of this section provided that:

(i) the hazardous oil and gas waste is being transported pursuant to a reclamation agreement that meets the requirements of subsection (o)(1)(E) of this section;

(ii) the transporter records, on a log or shipping paper, the following information for each shipment:

(I) the name, address, and EPA ID number of the generator of the hazardous oil and gas waste;

(II) the quantity of hazardous oil and gas waste accepted;

(III) all DOT required shipping information;

(IV) the date the hazardous oil and gas waste is accepted;

(iii) the transporter carries this record when transporting the hazardous oil and gas waste to the reclamation facility; and

(iv) the transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(5) Delivery of Waste. The transporter must deliver the entire quantity of hazardous oil and gas waste accepted from a generator or a transporter to:

(A) the primary designated facility;

(B) the alternate designated facility, if the hazardous oil and gas waste cannot be delivered to the primary designated facility because an emergency prevents delivery;

(C) the next designated transporter; or

(D) for exports, the location designated in the EPA Acknowledgment of Consent.

(6) Inability to Deliver Waste. If the hazardous oil and gas waste cannot be delivered as provided in subsection (w)(5) of this section the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(7) Recordkeeping.

(A) A transporter of hazardous oil and gas waste must keep a copy of the manifest signed by the generator, himself or herself, and the next transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter.

(B) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in 40 CFR, § 263.20(e)(2) for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter.

(C) For shipments of hazardous oil and gas waste by rail within the United States:

(i) the initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in 40 CFR, § 263.20(f)(2) for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter; and

(ii) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter.

(D) A transporter who transports hazardous oil and gas waste out of the United States must keep, for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter, a copy of the manifest indicating that the hazardous oil and gas waste left the United States.

(E) The periods of retention referred to in subsection (w)(7) of this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or upon request by the commission.

(x) Discharges.

(1) Reporting Requirements.

(A) Commission. A person subject to regulation under this section shall immediately notify the commission upon discovery of any discharge in which a reportable quantity of a hazardous oil and gas waste is discharged. Such notification shall be made by contacting the appropriate commission district office.

(B) Federal. Persons subject to regulation under this section shall comply with applicable reporting requirements of 40 CFR, Parts 117, 263, and 302.

(2) Initial Response.

(A) Immediate Action. Upon discovery of a discharge of hazardous oil and gas waste, the generator or transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, where appropriate, and dike the discharge area).

(B) Permitting Exemption. The prohibition of on-site treatment, storage, disposal, recycling, or reclamation activities in subsection (m)(1) of this section does not apply to activities performed by a person engaged in treatment or containment activities during immediate response to a discharge of hazardous oil and gas waste; an imminent and substantial threat of a discharge of hazardous oil and gas waste; or a discharge of a substance which, when discharged, would become a hazardous oil and gas waste, provided that:

(i) any hazardous oil and gas waste associated with such discharge is managed in accordance with applicable provisions of subsections (h) (relating to preparedness and prevention), (i) (relating to personnel training), (k) (relating to standards for use of containers), and (l) (standards for use of tank systems) of this section; and

(ii) the applicable discharge reporting requirements of subsection (x) of this section are complied with.

(C) Continued Measures. The provisions of subparagraph (B) of this paragraph do not apply to activities that continue or are initiated after the immediate response is over. Such activities are subject to all applicable requirements of this section.

(3) Discharge Clean Up.

(A) The generator or transporter shall recover as much as of the spilled material as can be recovered by ordinary physical means as soon as possible after discovery of the spill.

(B) The generator or transporter shall clean up the site at which the discharge occurred to background levels as soon as reasonably possible. As an alternative to clean-up to background levels, the generator or transporter must take such action as may be required or approved by the commission so that the hazardous oil and gas waste discharge no longer presents a hazard to human health or the environment, taking into consideration the geology and hydrology of the discharge site, the nature and quantity of the hazardous oil and gas waste discharged, and the present and anticipated future use of the discharge site.

(C) If an official (state or local government or a federal agency) acting within the scope of his or her official responsibilities determines that immediate removal of the hazardous oil and gas waste associated with a discharge is necessary to protect human health or the environment, that official may authorize the removal of the hazardous oil and gas waste by transporters who do not have EPA ID numbers and without the preparation of a manifest.

(y) Emergency Permits.

(1) General. Notwithstanding any other provision of this section, the commission may authorize by emergency permit the treatment, storage, or disposal of hazardous oil and gas waste where the commission finds that a discharge of hazardous oil and gas waste poses a danger to life or property.

(2) Requirements. An emergency permit:

(A) may be oral or written. If oral, a written permit must be issued within five days of issuance of the oral permit;

(B) shall have a term of not more than 90 days;

(C) shall clearly specify the manner and location of authorized treatment, storage, and disposal activities;

(D) may be terminated by the commission without notice if the commission determines that termination is appropriate to protect human health and the environment;

(E) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of 40 CFR, Parts 264, 266, and 270; and

(F) shall be accompanied by a public notice published in a daily or local newspaper of general circulation in the area affected by the activity and broadcast over local radio stations. The notice shall include:

(i) the name and address of the office granting the emergency authorization;

(ii) the name and location at which the permitted activities will take place;

(iii) a brief description of the hazardous oil and gas wastes involved;

(iv) a brief description of the actions authorized and reasons for authorization of such actions; and

(v) the duration of the emergency permit.

(z) Fees.

(1) Base fee.

(A) Except as provided in subparagraph (B) of this paragraph:

(i) each generator who is classified as an LQG during any calendar month of a calendar year shall pay to the commission a base annual fee for generation of hazardous oil and gas waste of \$1,000;

(ii) each generator who is not classified as an LQG during any calendar month of a calendar year, but is classified as an SQG during a calendar month of that calendar year, shall pay to the commission a base annual fee for generation of hazardous oil and gas waste of \$200; and

(iii) no annual fee for generation of hazardous oil and gas waste shall be assessed against a generator who is classified as a CESQG during all months of the entire calendar year in which he or she generates hazardous oil and gas waste.

(B) For purposes of determining the base fee as provided in subparagraph (A) of this paragraph, generator classification shall be determined after excluding quantities of hazardous oil and gas waste generated in connection with a spill or discharge, including contaminated soil, media, and debris, if, within 30 days after discovery of such spill or discharge, the generator files a one-page typewritten report with the commission that describes:

(i) the nature and quantity of spilled or discharged material;

(ii) the reason for or cause of the spill or discharge; and

(iii) the steps that have been or will be taken by the generator to minimize the likelihood of a similar spill or discharge at that site.

(2) Additional fee. The base annual fee determined according to the provisions of paragraph (1) of this subsection shall be doubled if less than 50% of the hazardous oil and gas wastes generated at the site during the entire calendar year are recycled, reused or reclaimed. For purposes of calculating the percentage of hazardous oil and gas wastes that are recycled, reused, or reclaimed, hazardous oil and gas wastes excluded from regulation under this section by the provisions of

subsection (e)(3)(B)(i)-(iii) of this section (relating to exclusions and exemptions from hazardous oil and gas waste classification) and subsection (m)(2)(B) of this section (relating to elementary neutralization units, totally enclosed treatment facilities, and wastewater treatment units) shall be included in the quantity of hazardous oil and gas waste recycled, reused, or reclaimed. The wastes excluded from regulation under this section under the provisions of subsections (e)(3)(B)(i)-(iii) and (m)(2)(B) of this section shall not be included when calculating the quantity of waste generated for purposes of determining generator classification.

(3) Fee payment. The base fee and any additional fee assessed under this subsection shall be paid to the commission on or before the first day of March of the year following the calendar year in which the waste was generated. Fees assessed under this subsection shall be tendered to the commission with the annual report (see subsection (u)(1) of this section).

(aa) Penalties. A person subject to regulation under this section is subject to the penalties prescribed in the Texas Natural Resources Code if such person does not comply with the requirements of this section.

(bb) Federal Regulations. All references to the Code of Federal Regulations (CFR) in this section are references to the 1994 edition of the Code, as amended through November 7, 1995. The following federal regulations are adopted by reference and copies can be obtained at the William B. Travis Building, 1701 North Congress, Austin, Texas 78711: 40 CFR, Parts 116, 117, 124, 264, 266, 268, 270, 271, 279, and 302; 40 CFR, Part 261, Subparts A, C, and D; 40 CFR, Part 262, Subparts B and E; 40 CFR, Part 265, Subparts C, D, I, and J (except § 265.197(c) and § 265.200); 40 CFR, §§ 260.21, 260.22, 262.34(d)(5), 265.16, 265.111, 265.114, and 265.201; 49 CFR, Parts 172, 173, 178, and 179; and 49 CFR, § 171.15 and § 171.16. Words and terms used in the federal regulations adopted by reference shall have the meanings given in the federal regulations adopted by reference or in 40 CFR § 260.10, unless otherwise specified. Where the term "State Director" is applicable in the federal regulations adopted by reference, it should be interpreted to mean "commission."

Source Note: The provisions of this §3.98 adopted to be effective April 1, 1996, 20 TexReg 9423; amended to be effective May 4, 1999, 24 TexReg 3313; amended to be effective September 10, 2001, 26 TexReg 6870; amended to be effective November 24, 2004, 29 TexReg 10728

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