

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §305.69, Solid Waste Permit Modification at the Request of the Permittee.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The primary purpose of the proposed amendment is to revise commission rules to conform to the federal military munitions regulation promulgated by the United States Environmental Protection Agency (EPA) on February 12, 1997 at 62 FedReg 6622. The proposed rule provides that a permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if the facility and permittee meet certain conditions as described in the Section by Section Discussion portion of this preamble. In addition to this amendment to Chapter 305, requirements concerning military munitions waste are concurrently being proposed as amendments to Chapter 335 of this title, relating to Industrial Solid Waste and Municipal Hazardous Waste, which would define when military munitions become solid wastes. As a result, some military installations receiving materials that were not previously wastes may become regulated. In these cases, if the installation's hazardous waste permit has conditions prohibiting the receipt of "off-site" wastes, and the newly regulated wastes are being received from off-site, the installation would be in violation of its hazardous waste permit, unless and until the permit is modified to authorize the receipt of off-site waste munitions. To address these potential unintended violations, the proposed amendment would set in place a rule to allow the permittee to continue to accept the waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if the facility and permittee meet certain conditions. If no such off-site waste prohibition exists in the permit, other necessary modifications would be done under the procedures of existing §305.69(h), which addresses newly regulated wastes and units. No change to §305.69(h) needs to be proposed at this time.

SECTION BY SECTION DISCUSSION

Section 305.69 is proposed for amendment to incorporate new requirements relating to military hazardous waste munitions storage, processing, and disposal. The proposed amendment under §305.69(j) would allow a permittee to continue to accept from off-site military munitions that have become a hazardous waste notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if the facility and permittee meet certain conditions. These conditions are proposed under §305.69(j)(1) - (3). Proposed §305.69(j)(1) would require that the facility be in existence as a hazardous waste management facility, and the facility be permitted to handle waste military munitions on the date when waste military munitions become subject to hazardous waste regulatory requirements. Proposed §305.69(j)(2) would require that the permittee submit, on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions. Proposed §305.69(j)(3) would require that permittee submit a Class 2 modification request within 180 days of the date when waste military munitions become subject to hazardous waste regulatory requirements. Currently existing §305.69(j) is proposed to be renumbered to §305.69(k) to account for the addition of the new conditions under proposed §305.69(j).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed amendment is in effect, there will be fiscal implications which are not anticipated to be significant for any unit of state and local government as a result of administration or enforcement of the proposed amendment.

The proposed amendment implements aspects of the federal Military Munitions Rule (MMR), finalized February 17, 1997, which identifies when conventional and chemical military munitions become subject to hazardous waste regulatory requirements under the Resource Conservation and Recovery Act (RCRA). In order for the commission to implement the MMR, the proposed amendment must be made to authorize permit modifications for federal military hazardous waste facilities in Texas to receive the newly RCRA-regulated military munitions, not previously considered solid waste. In addition to the proposed amendment, a concurrent rulemaking is also being proposed to amend Chapter 335 in order to identify when conventional and chemical military munitions will be classified as hazardous waste.

Currently, military munitions are defined as solid wastes once the intent to discard has been declared. Once Texas adopts the federal MMR, the rule will exclude from the definition of military munitions any non-nuclear components of nuclear weapons until those components have been sanitized under the Atomic Energy Act of 1954, as amended. After sanitization, the components may be characterized as military munitions and, once discarded, are solid wastes subject to state jurisdiction. Those components that are solid wastes and are also determined to be hazardous will be regulated as hazardous waste by the state. If a facility in Texas currently receives off-site military munitions that will become wastes as a result of this rule adoption, and if their permit restricts the receipt of off-site waste, they will need to modify their permit in order to continue to receive the newly regulated munitions. The proposed amendment allows for the modification of permits for facilities to continue to receive what would now be defined as off-site military munitions waste.

There are approximately 180 permitted hazardous waste facilities in Texas. Of the approximately 180, 19 federal military sites may be affected by the proposed amendments. None of these facilities is currently

authorized to receive military munitions that become designated as hazardous waste. In order to receive authorization to continue to receive such munitions, these 19 sites may have to submit a permit modification. The fee to submit a class 1 modification requesting the removal of any prohibition to receive off-site waste, is \$150. The fee to submit a request for a Class 2 modification, which will allow a facility to manage off-site waste military munitions, is \$550. Additionally, federal facilities will incur the costs of preparing and complying with the permit modification.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be increased public protection through the clarification of state jurisdiction of military munitions in Texas. There will be no anticipated adverse fiscal implications to individuals and businesses as a result of administration and enforcement of the proposed amendment because there are no individuals or businesses affected by the proposed amendment.

The proposed amendment would allow federal military hazardous waste facilities to update their permits in order to receive and process off-site military munitions waste classified as hazardous waste. Affected federal military facilities in Texas are currently only permitted to handle on-site military munitions waste or very specific off-site wastes. If permits are not updated, these facilities will not be able to receive from off-site, certain military munitions that will be characterized as hazardous waste once amendments to Chapter 335, being processed concurrently with this rulemaking, are adopted.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse economic impacts to any small or micro-business as a result of implementing the proposed amendment. The proposed amendment only applies to currently permitted federal military facilities. The proposed amendment would allow federal military hazardous waste facilities to update their permits in order to receive and process off-site military munitions classified as hazardous waste. Affected federal military facilities in Texas are currently permitted to handle only on-site military munitions waste or very specific off-site wastes. If permits are not updated, these facilities will not be able to receive from off-site, certain military munitions that will be characterized as hazardous waste once amendments to Chapter 335, being processed concurrently with this rulemaking, are adopted.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The proposal would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment will provide the ability to make required changes to permits to allow federal military hazardous waste facilities to receive and process off-site military munitions waste classified as hazardous solid waste. The proposed amendment does not meet the definition of a "major environmental rule" as defined in the Texas Government Code, since §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement

or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The commission concludes that a regulatory analysis is not required in this instance because the proposed rule does not trigger any of the four criteria in §2001.0225.

The proposed rule does not exceed a standard set by federal law.

The requirements of this rule is being implemented to maintain equivalency with federal law (federal military munitions rule, 62 FedReg 6622 *et seq.*) and do not exceed any federal standards.

The proposed rule does not exceed an express requirement of state law.

The requirements of this rule seek to carry out the commission's statutory responsibility under Texas Health and Safety Code (THSC), §361.017 (relating to the commission's jurisdiction over industrial solid and hazardous municipal waste) and §361.024 (relating to rules and standards). The rule seeks to comply with the relevant specific state law and not to exceed it.

The proposed rule does not exceed a delegation agreement or contract between the state and the federal government.

The commission is not a party to a delegation agreement with the federal government concerning a state or federal program that would be applicable to requirements set forth in the rule. Accordingly, there are no delegation agreement requirements that could be exceeded by this rule.

The proposed rule is not adopted solely under the general powers of the agency.

The commission is adopting this rule under the general powers of the agency, Texas Water Code (TWC), §5.103 (relating to rules) and §5.105 (relating to general policy), as well as under certain specific statutory authority of the agency, THSC, §361.017 and §361.024. Accordingly, this rule is not being adopted solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has performed a preliminary assessment of this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rule is to ensure that Texas' state hazardous waste rules on military munitions waste are equivalent to the federal regulations after which they are patterned. The proposed rule will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rule pursuant to 31

TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the proposed rule amendment will update and enhance the commission's rules concerning permit modifications for certain hazardous and industrial solid waste facilities. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rule.

SUBMITTAL OF COMMENTS

Comments may be mailed to Angela Slupe, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13807, Austin, Texas 78711-3087. All comments should reference Rule Log Number 1999-080-335-WS. Comments must be received by 5:00 p.m., January 8, 2001. For further information, please contact Ray Austin, Policy and Regulations Division, (512) 239-6814.

STATUTORY AUTHORITY

The amended section is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amended section implements THSC, Chapter 361.

**SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS,
CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS**

§305.69

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a) - (i) (No change.)

(j) Military hazardous waste munitions storage, processing, and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) the facility is in existence as a hazardous waste facility, and the facility is already permitted to handle waste military munitions, on the date when waste military munitions become subject to hazardous waste regulatory requirements;

(2) on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions; and

(3) the permittee submits a Class 2 modification request within 180 days of the date when the waste military munitions become subject to hazardous waste regulatory requirements.

(k) [(j)] Appendix I. The following appendix will be used for the purposes of Subchapter D which relates to industrial and hazardous solid waste permit modification at the request of the permittee.

Figure: 30 TAC §305.69(k) [Figure: 30 TAC §305.69(j)]

Figure: 30 TAC 305.69(k)

Modifications Class

A. General Permit Provisions

1. Administrative and informational changes 1
2. Correction of typographical errors 1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls) 1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:
 - a. To provide for more frequent monitoring, reporting, sampling, or maintenance 1
 - b. Other changes 2
5. Schedule of compliance

- a. Changes in interim compliance dates, with prior approval of the executive director 1¹
- b. Extension of final compliance date 3

- 6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director 1¹
- 7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) are followed 1¹
- 8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units pursuant to §305.149(b)(2) or (4) 2
- 9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit pursuant to §305.149(b)(3) or §305.149(b)(4) 3
- 10. Any extension pursuant to §305.149(b)(3) of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) 3

B. General Facility Standards

- 1. Changes to waste sampling or analysis methods:
 - a. To conform with agency guidance or regulations 1
 - b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods 1¹

c.	To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	1 ¹
d.	Other changes	2
2.	Changes to analytical quality assurance/control plan:	
a.	To conform with agency guidance or regulations	1
b.	Other changes	2
3.	Changes in procedures for maintaining the operating record	1
4.	Changes in frequency or content of inspection schedules	2
5.	Changes in the training plan:	
a.	That affect the type or decrease the amount of training given to employees	2
b.	Other changes	1
6.	Contingency plan:	
a.	Changes in emergency procedures (i.e., spill or release response procedures)	2
b.	Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed	1
c.	Removal of equipment from emergency equipment list	2

- d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan 1

7. Construction quality assurance plan:

- a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications 1
- b. Other Changes 2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater Protection

1. Changes to wells:

- a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system 2
- b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well 1

2.	Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director	1 ¹
3.	Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director	1 ¹
4.	Changes in point of compliance	2
5.	Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):	
a.	As specified in the groundwater protection standard	3
b.	As specified in the detection monitoring program	2
6.	Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix	2
7.	Compliance monitoring program:	
a.	Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title, and §335.165 of this title (relating to Compliance Monitoring Program)	3
b.	Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix	2

8. Corrective action program:

- a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title and §335.166 of this title (relating to Corrective Action Program) 3
- b. Changes to a corrective action program as required by §335.166(8) of this title, unless otherwise specified in this appendix 2

D. Closure

1. Changes to the closure plan:

- a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director 1¹
- b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director 1¹
- c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director 1¹
- d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director 1¹
- e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this

appendix	2
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 Code of Federal Regulations (CFR) §264.113(d) and (e).	2
2. Creation of a new landfill unit as part of closure	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments	3
b. Incinerators	3
c. Waste piles that do not comply with 40 CFR §264.250(c)	3
d. Waste piles that comply with 40 CFR §264.250(c)	2
e. Tanks or containers (other than specified below)	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director	1 ¹
 E. Post-Closure	
1. Changes in name, address, or phone number of contact in post-closure plan	1
2. Extension of post-closure care period	2
3. Reduction in the post-closure care period	3
4. Changes to the expected year of final closure, where other permit conditions are not	

changed 1

5. Changes in post-closure plan necessitated by events occurring during the active life
of the facility, including partial and final closure 2

F. Containers

1. Modification or addition of container units:

a. Resulting in greater than 25% increase in the facility's container storage
capacity, except as provided in F(1)(c) and F(4)(a) below 3

b. Resulting in up to 25% increase in the facility's container storage capacity,
except as provided in F(1)(c) and F(4)(a) below 2

c. Or treatment processes necessary to treat wastes that are restricted from
land disposal to meet some or all of the applicable treatment standards or to
treat wastes to satisfy (in whole or in part) the standard of "use of
practically available technology that yields the greatest environmental
benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the
executive director. This modification may also involve addition of new
waste codes or narrative descriptions of wastes. It is not applicable to
dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹

2. Modification of container units, as follows:

- a. Modification of a container unit without increasing the capacity of the unit 2
 - b. Addition of a roof to a container unit without alteration of the containment system 1
3. Storage of different wastes in containers, except as provided in F(4) below:
- a. That require additional or different management practices from those authorized in the permit 3
 - b. That do not require additional or different management practices from those authorized in the permit 2

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:
- a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with

- prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹
- b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1
- 5. Other changes in container management practices (e.g., aisle space, types of containers, segregation) 2

G. Tanks

- 1. Modification or addition of tank units or treatment processes, as follows:
 - a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below of this appendix 3
 - b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix 2
 - c. Addition of a new tank (no capacity limitation) that will operate for more

- than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 2
- d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 1¹
- e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit 2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided: 1
- a. The capacity difference is no more than 1500 gallons;
- b. The facility's permitted tank capacity is not increased; and

- c. The replacement tank meets the same conditions in the permit.

- 4. Modification of a tank management practice 2

- 5. Management of different wastes in tanks:
 - a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below 3

 - b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below 2

 - c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹

 - d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have

previously received wastes of the same type (e.g., incinerator scrubber
water). This modification is not applicable to dioxin-containing wastes
(F020, 021, 022, 023, 026, 027, and 028) 1

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the
facility's surface impoundment storage or treatment capacity 3

2. Replacement of a surface impoundment unit 3

3. Modification of a surface impoundment unit without increasing the facility's surface
impoundment storage or treatment capacity and without modifying the unit's liner,
leak detection system, or leachate collection system 2

4. Modification of a surface impoundment management practice 2

5. Treatment, storage, or disposal of different wastes in surface impoundments:

a. That require additional or different management practices or different
design of the liner or leak detection system than authorized in the permit 3

b. That do not require additional or different management practices or
different design of the liner or leak detection system than authorized in the
permit 2

- c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1
- d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

- 6. Modifications of unconstructed units to comply with §§264.221(c), 264.222, 264.223 and 264.226(d) 1¹

- 7. Changes in response action plan:
 - a. Increase in action leakage rate 3
 - b. Change in a specific response reducing its frequency or effectiveness 3
 - c. Other Changes 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

- I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR §264.250(c), modifications are treated the same as for a landfill.

The following modifications are applicable only to waste piles complying with 40 CFR §264.250(c).

- 1. Modification or addition of waste pile units:
 - a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity 3
 - b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity 2
- 2. Modification of waste pile unit without increasing the capacity of the unit 2
- 3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit 1
- 4. Modification of a waste pile management practice 2
- 5. Storage or treatment of different wastes in waste piles:
 - a. That require additional or different management practices or different

design of the unit	3
b. That do not require additional or different management practices or different design of the unit	2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

6. Conversion of an enclosed waste pile to a containment building unit	2
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J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity	3
2. Replacement of a landfill	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system	2
5. Modification of a landfill management practice	2
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	3

- b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system 2
- c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1
- d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

- 7. Modifications of unconstructed units to comply with §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 1¹
- 8. Changes in response action plan:

- a. Increase in action leakage rate 3
- b. Change in a specific response reducing its frequency or effectiveness 3
- c. Other changes 2

K. Land Treatment

- 1. Lateral expansion of or other modification of a land treatment unit to increase areal extent 3
- 2. Modification of run-on control system 2
- 3. Modify run-off control system 3
- 4. Other modifications of land treatment unit component specifications or standards required in the permit 2
- 5. Management of different wastes in land treatment units:
 - a. That require a change in permit operating conditions or unit design specifications 3
 - b. That do not require a change in permit operating conditions or unit design specifications 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

- 6. Modification of a land treatment management practice to:

a.	Increase rate or change method of waste application	3
b.	Decrease rate of waste application	1
7.	Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions	2
8.	Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops	3
9.	Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR §264.278(g)(2)	3
10.	Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements	3
11.	Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements	2
12.	Changes in background values for hazardous constituents in soil and soil-pore liquid	2
13.	Changes in sampling, analysis, or statistical procedure	2
14.	Changes in land treatment demonstration program prior to or during the demonstration	2
15.	Changes in any condition specified in the permit for a land treatment unit to reflect	

- results of the land treatment demonstration, provided performance standards are met,
and the executive director's prior approval has been received 1¹
16. Changes to allow a second land treatment demonstration to be conducted when the
results of the first demonstration have not shown the conditions under which the
wastes can be treated completely, provided the conditions for the second
demonstration are substantially the same as the conditions for the first demonstration
and have received the prior approval of the executive director 1¹
17. Changes to allow a second land treatment demonstration to be conducted when the
results of the first demonstration have not shown the conditions under which the
waste can be treated completely, where the conditions for the second demonstration
are not substantially the same as the conditions for the first demonstration 3
18. Changes in vegetative cover requirements for closure 2

L. Incinerators, Boilers and Industrial Furnaces

1. Changes to increase by more than 25% any of the following limits authorized in the
permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate
limit, a metal feed rate limit, or an ash feed rate limit. The executive director will
require a new trial burn to substantiate compliance with the regulatory performance
standards unless this demonstration can be made through other means 3
2. Changes to increase by up to 25% any of the following limits authorized in the
permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed
rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director

- will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HC1/C1₂, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards 2
5. Operating requirements:
- a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control

system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3

b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls 3

c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit 2

6. Burning different wastes:

a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3

b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly regulated wastes and units.

7. Shakedown and trial burn:
 - a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn 2
 - b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director 1¹
 - c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director 1¹
 - d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director 1¹
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit 1
9. Technology changes needed to meet standards under 40 CFR Part 63 (Subpart EEE -

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Combustors), provided the procedures of §305.69(i) of this title are followed. 1¹

M. Corrective Action

1. Approval of a corrective action management unit pursuant to 40 CFR §264.552 3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40
CFR §264.553 2

N. Containment Buildings

1. Modification or addition of containment building units:
 - a. Resulting in greater than 25% increase in the facility's containment
building storage or treatment capacity 3
 - b. Resulting in up to 25% increase in the facility's containment building
storage or treatment capacity 2
2. Modification of a containment building unit or secondary containment system
without increasing the capacity of the unit 2
3. Replacement of a containment building with a containment building that meets the
same design standards provided:

- a. The unit capacity is not increased 1
- b. The replacement containment building meets the same conditions in the
permit 1

- 4. Modification of a containment building management practice 2

- 5. Storage or treatment of different wastes in containment buildings:
 - a. That require additional or different management
practices 3
 - b. That do not require additional or different management
practices 2