

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §305.2, Definitions; §305.69, Solid Waste Permit Modification at the Request of the Permittee; §305.122, Characteristics of Permits; §305.150, Incorporation of References; and §305.571, Applicability. The commission also adopts a new §305.175, Conditional Exemption for Demonstrating Compliance with Certain Air Standards. Section 305.69 is adopted *with changes* to the proposed text as published in the June 22, 2001 issue of the *Texas Register* (26 TexReg 4596). The remaining sections are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The primary purpose of the rulemaking is to revise the commission rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the commission rules which corresponds to the federal regulations. Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). The federal regulations being addressed in this adoption were promulgated by the EPA in issues of the *Federal Register* from the years 1994, 1998, and 1999. The adopted amendments also make editorial and administrative corrections to improve the readability of Chapter 305.

SECTION BY SECTION DISCUSSION AND RESPONSE TO COMMENTS

This discussion provides an explanation of changes made to the proposed text since publication in the June 22, 2001 issue of the *Texas Register* (26 TexReg 4596). One minor change to the proposal is made in response to comments provided by the Dow Chemical Company. Adopted §305.69(i)(1) is

changed from proposal by correcting the date of the *Federal Register* citation for Notice of Intent to Comply requirements from July 7, 2000 to July 10, 2000. The only other changes made to the proposed text are punctuation and minor grammatical changes to conform to *Texas Register* formatting and style requirements.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and 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 adoption does 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 adopted amendments update the commission's consolidated permits rules to incorporate certain federal regulations regarding air emission requirements and make administrative changes and corrections. The adopted amendments do not meet the definition of a major environmental rule as defined in the Texas Government Code, because §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 adopted rules do not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to ensure that the commission's consolidated permits hazardous waste rules on air emissions and remediation waste are equivalent to the federal regulations after which they are patterned. The adopted rules 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 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 reviewed the rulemaking and found that the adoption is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas 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 prepared a consistency determination for the adopted rules in accordance with 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the

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, §§6901 et seq. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the adopted rule amendments will update and enhance commission rules concerning consolidated permits for certain hazardous and industrial solid waste facilities. In addition, the adopted rules do not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

The commission did not hold public hearings on the proposed rules. Two commenters submitted written comments during the comment period which closed at 5:00 p.m., July 23, 2001. Written comments were submitted by the Dow Chemical Company and the Texas Department of Transportation. The Dow Chemical Company's comments are addressed in the SECTION BY SECTION DISCUSSION AND RESPONSE TO COMMENTS section of this preamble. The Texas Department of Transportation commented that they had reviewed the proposed amendments, but had no comments or suggestions to offer on the proposal.

STATUTORY AUTHORITY

The amendment is adopted 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.

SUBCHAPTER A: GENERAL PROVISIONS

§305.2

§305.2. Definitions.

The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Health and Safety Code, §§361.003, 401.003, and 401.004, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Application** - A formal written request for commission action relative to a permit, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

(2) **Bypass** - The intentional diversion of a waste stream from any portion of a treatment facility.

(3) **Class I sludge management facility** - Any publicly owned treatment works (POTW) identified under 40 Code of Federal Regulations (CFR), §403.10(a) as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive

director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(4) **Component** - Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

(5) **Continuous discharge** - A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(6) **Corrective action management unit (CAMU)** - An area within a facility that is designated by the commission under 40 CFR, Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes while implementing such corrective action requirements at the facility.

(7) **CWA** - Clean Water Act (formerly referred to as the Federal Water Pollution and Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92 - 500, as amended by Public Law 95 - 217, Public Law 95 - 576, Public Law 96 - 483, and Public Law 97 - 117, 33 United States Code, 1251 et seq.

(8) **Daily average concentration** - The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

(9) **Daily average flow** - The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

(10) **Direct discharge** - The discharge of a pollutant.

(11) **Discharge Monitoring Report (DMR)** - The EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

(12) **Disposal** - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

(13) **Disposal facility** - A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(14) **Effluent limitation** - Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

(15) **Environmental Protection Agency (EPA)** - The United States Environmental Protection Agency.

(16) **Facility** - Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units;

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste);

(17) **Facility mailing list** - The mailing list for a facility maintained by the commission in accordance with 40 CFR, §124.10(c)(1)(ix) and §39.7 of this title (relating to Public Notice). For Class I injection well underground injection control (UIC) permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(18) **Functionally equivalent component** - A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(19) **Indirect discharger** - A nondomestic discharger introducing pollutants to a POTW.

(20) **Injection well permit** - A permit issued pursuant to Texas Water Code, Chapter 27.

(21) **Land disposal facility** - Includes landfills, waste piles, surface impoundments, land farms and injection wells.

(22) **National Pollutant Discharge Elimination System (NPDES)** - The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405. The term includes an approved program.

(23) **New discharger** -

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective NPDES permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

(24) **New source** - Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under CWA, §306; or

(B) after proposal of standards of performance in accordance with CWA, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

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

(26) **Outfall** - The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.

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

(28) **Permit** - A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(29) **Person** - An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.

(30) **Primary industry category** - Any industry category listed in 40 CFR, Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

(31) **Process wastewater** - Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(32) **Processing** - The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline or other means.

(33) **Publicly owned treatment works (POTW)** - Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(34) **Radioactive material** - A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(35) **Recommencing discharger** - A source which recommences discharge after terminating operations.

(36) **Regional administrator** - Except when used in conjunction with the words "state director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Natural Resource Conservation Commission, or to the Texas Natural Resource Conservation

Commission, consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words “state director” in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 CFR, Part 122, is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(37) **Remediation waste** - All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Water Code, §7.031, §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title.

(38) **Schedule of compliance** - A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with CWA and regulations.

(39) **Severe property damage** - Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

(40) **Sewage sludge** - The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(41) **Site** - The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(42) **Solid waste permit** - A permit issued under Texas Civil Statutes, Article 4477-7, as amended.

(43) **Storage** - The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere.

(44) **Texas pollutant discharge elimination system (TPDES)** - The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405; Texas Water Code; and Texas Administrative Code regulations.

(45) **Toxic pollutant** - Any pollutant listed as toxic under the CWA, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA, §405(d).

(46) **Treatment works treating domestic sewage** - A POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(47) **Variance** - Any mechanism or provision under CWA, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA or this title.

(48) **Wastewater discharge permit** - A permit issued under Texas Water Code, Chapter 26.

(49) **Wetlands** - Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

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

§305.69

STATUTORY AUTHORITY

The amendment is adopted under 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 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.

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

(a) This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are covered in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications).

(b) Class I modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of this subchapter under the following conditions:

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41-305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the executive director evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied;

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before

the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, subparagraphs (A), (B), (C), (D), or (E) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification;

or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization; or

(E) the executive director must notify the permittee that the executive director or the commission will decide on the request within the next 30 days.

(7) If the executive director notifies the permittee of a 30-day extension for a decision, then no later than 120 days after receipt of the modification request, subparagraphs (A), (B), (C), or (D) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification;

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(8) If the executive director or the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the executive director or the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §39.13 of this title (relating to Mailed Notice),

and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the executive director or the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the executive director or the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendment) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335,

Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the executive director or the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (f) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission or the executive director may change the terms of, and the commission may deny a Class 2 permit modification request under paragraphs (6) - (8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Subchapter F, Chapter 335 of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41-305.45 and 305.47-305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses); and Subchapter Q of this chapter (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the executive director. The notice shall include the following:

(A) all information required by §39.11 of this title (relating to Text of Mailed Notice);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of Chapter 39 of this title (relating to Public Notice), Chapter 50 of this title (relating to Action on Applications), and Chapter 55 of this title (relating to Request for Contested Case Hearing; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this subchapter, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class

1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may grant the permittee a temporary authorization having a term of up to 180 days, in accordance with this subsection, and in accordance with the following public notice requirements:

(A) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(B) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii) - (v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with the applicable standards of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) and 40 Code of Federal Regulations (CFR) Part 264.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the applicable standards of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) and 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or RCRA §3004;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §39.13 of this title (relating to Mailed Notice) within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days

after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, the Government Code, Chapter 2002.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR, Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 335, Subchapter H, Divisions 1 through 4 (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to RCRA Subtitle C management standards; and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR, Part 265 groundwater monitoring requirements and with Chapter 37 of this title (relating to Financial Assurance) on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet Title 40 Code of Federal Regulations (CFR) Part 63 Maximum Achievable Control Technology (MACT) standards. The following procedures apply to

hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of this subchapter.

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c), as amended through July 10, 2000 (65 FR 42292), before a permit modification can be requested under this section.

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(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) Appendix I. The following appendix will be used for the purposes of this subchapter 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(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	1 ¹
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	1 ¹
7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) of this title (relating to Transfer of Permits) are followed	1 ¹
8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units in accordance with §305.149(b)(2) or (4) of this title (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units)	2
9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit in accordance with §305.149(b)(3) or (4) of this title	3
10. Any extension in accordance with §305.149(b)(3) of this title of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) of this title	3

- 11. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility) 1¹

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 1¹
 - 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 (CQA) 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 1¹
- 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 1¹
- 4. Changes in point of compliance 2
- 5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits (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, 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	1 ¹
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	1 ¹
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director	1 ¹
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director	1 ¹
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
g. Staging Pile	2

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) of this appendix 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) of this appendix 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) of this appendix:
 - 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 Solid Waste Permit Modification at the Request of the Permittee) 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) 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) 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 1,500 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) of this appendix 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) of this appendix 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) of this title	1 ¹
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

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 of this title 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	1 ¹
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	1 ¹
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 HCl/Cl₂, 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 principal organic hazardous constituent (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 Title 40 CFR Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste 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 Code of Federal Regulations 264.552 3
- 2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 Code of Federal Regulations 264.553 2
- 3. Approval of a staging pile or staging pile operating term extension pursuant to 40 Code of Federal Regulations §264.554 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

SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS

§305.122

STATUTORY AUTHORITY

The amendment is adopted under 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 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.

§305.122. Characteristics of Permits.

(a) Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

- (1) become effective by statute;
- (2) are promulgated under 40 Code of Federal Regulations (CFR) Part 268, restricting the placement of hazardous wastes in or on the land;
- (3) are promulgated under 40 CFR Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface

impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance programs, monitoring, action leakage rates, and response action plans, and will be implemented through the Class 1 permit modifications procedures of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); or

(4) are promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112 of this title (relating to Standards).

(b) A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(c) The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

(d) Except for any toxic effluent standards and prohibitions imposed under Clean Water Act (CWA), §307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in §§305.62 and 305.66 of this title (relating to Amendment; and Permit Denial, Revocation and Suspension.)

**SUBCHAPTER G: ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL
SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS**

§305.150

STATUTORY AUTHORITY

The amendment is adopted under 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 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.

§305.150. Incorporation of References.

When used in this chapter (relating to Consolidated Permits), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended through May 14, 1999 (64 FR 26315).

SUBCHAPTER I: HAZARDOUS WASTE INCINERATOR PERMITS

§305.175

STATUTORY AUTHORITY

The new section is adopted under 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 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.

§305.175. Conditional Exemption for Demonstrating Compliance with Certain Air Standards.

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 Code of Federal Regulations Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

SUBCHAPTER Q: PERMITS FOR BOILERS AND INDUSTRIAL FURNACES

BURNING HAZARDOUS WASTE

§305.571

STATUTORY AUTHORITY

The amendment is adopted under 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 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.

§305.571. Applicability.

(a) Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR) §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

(b) When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE by

conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).