

The Texas Natural Resource Conservation Commission (commission) proposes 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; and new §305.175, Conditional Exemption for Demonstrating Compliance with Certain Air Standards.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed amendments 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 proposal were promulgated by the EPA in issues of the *Federal Register* from the years 1994, 1998, and 1999. Proposed amendments would also make editorial and administrative corrections to improve the readability of Chapter 305.

SECTION BY SECTION DISCUSSION

Ten definitions under §305.2 are proposed to be amended to make administrative corrections and changes for improved readability. The definitions under §305.2(3), “Class I sludge management facility”; §305.2(17), “Facility mailing list”; §305.2(30), “Primary industry category”; and §305.2(36), “Regional administrator” are proposed to be amended to streamline the references to Code of Federal Regulations (CFR). The definitions under §305.2(6), “Corrective action management unit

or CAMU”; §305.2(16), “Facility”; and §305.2(37), “Remediation waste” are proposed to be amended to correct each statutory reference to Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, §361.303 (relating to Corrective Action), by the replacing it with reference to Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). This proposed correction is in accordance with Acts 1997, 75th Legislature, Chapter 1072, Section 2, effective September 1, 1997. Additional changes are proposed under §305.2(17) to spell out the “underground injection control” and under §305.2(36) to correct the agency’s physical address. Also, §305.2(42), “Solid waste permit” and §305.2(48), “Wastewater discharge permit” are proposed to be changed to replace the phrase “pursuant to” with the word “under.” The definition under §305.2(44), “Texas pollutant discharge elimination system (TPDES)” is proposed to be corrected typographically.

Section 305.69(i)(1) is proposed to be amended by correcting the citation for Notice of Intent to Comply requirements from 40 CFR §63.1211 to 40 CFR §63.1210(b) and (c). The EPA corrected this citation in the July 7, 2000 publication of the *Federal Register* (65 FR 42292).

Section 305.69(k) is proposed to be amended by making administrative corrections and by adding a new modification under A.11. relating to the removal of permitting conditions which are no longer applicable. This proposed modification would conform to the federal regulations setting standards for hazardous air pollutants for hazardous waste combustors promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). Proposed under D.3.g. is a new modification relating to the use of staging piles for closure activities. Proposed M.3. is a new modification relating to the approval of staging pile operating term extension pursuant to 40 CFR §264.554. These proposed

modifications would conform to the federal regulations for hazardous waste remediation promulgated by EPA on November 30, 1998 (63 FR 65874).

Section 305.122(a)(3) and (4) is proposed to be amended to conform with the federal regulation promulgated by EPA in the December 6, 1994 issue of the *Federal Register* (59 FR 62896). Under proposed paragraph (3), the phrase “action plans, and will be implemented” in the second sentence following the word “response” was inadvertently omitted from the text of the rule and is proposed to be reinserted. Also in this sentence, an amendment is proposed to replace the reference to the federal regulation with the appropriate state rule. Paragraph (4) is proposed to be added to clarify that a permittee is required to comply with requirements promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112, even though the requirement may not be included in the permit terms.

Subchapter G is proposed to be amended in the title to add “hazardous and industrial,” so that the title would properly reflect the content of the subchapter. Section 305.150 is proposed to be amended to update references to be consistent with 40 CFR §260.11, as amended by EPA on May 14, 1999 (64 FR 26315). This proposed amendment would incorporate updates to “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, Third Edition. Section 305.150 is also proposed to be amended to remove the superfluous wording “and adopted in the Code of Federal Regulations.”

New §305.175 is proposed to be added to incorporate an exclusion from the requirements of Subchapter I for owners or operators of hazardous waste incinerators demonstrating compliance with certain air standards, conditioned by a provision that would allow the executive director to apply the requirements of Subchapter I, on a case-by-case basis, in order to establish certain permit conditions. These permit conditions are related to those necessary to protect human health and the environment, and those that may be necessary after the periodic review (i.e., every five years) of hazardous waste land disposal facility permits. In order to qualify for this conditional exemption, the owner or operator must demonstrate 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. This proposed change would conform with the federal regulation promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828).

Section 305.571 is proposed to be amended by adding new language under subsection (b), and putting the existing language under proposed subsection (a). The proposed new language would incorporate an exclusion from the requirements of Subchapter Q for owners or operators of hazardous waste cement or lightweight aggregate kilns demonstrating compliance with certain air standards, conditioned by a provision that would allow the executive director to apply the requirements of Subchapter Q, on a case-by-case basis, in order to establish certain permit conditions. These permit conditions are related to those necessary to protect human health and the environment, and those that may be necessary after the periodic review (i.e., every five years) of hazardous waste land disposal facility permits. In order to qualify for this conditional exemption, the owner or operator must demonstrate 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. This proposed change would conform with the federal regulation promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impacts to units of state or local government as a result of implementation of the proposed amendments.

The proposed amendments are intended to adopt federal regulations requiring certain hazardous waste facilities to modify Resource Conservation and Recovery Act (RCRA) permits once the facilities have achieved compliance with maximum achievable control technologies (MACT) standards for hazardous air pollutants. This proposal is intended to revise the commission rules to conform to federal regulations, either by incorporating the federal regulations by reference or by introducing language into the commission rules which corresponds to the federal regulations. The federal regulations being addressed in this proposal were promulgated by the EPA in issues of the *Federal Register* in 1994, 1998, and 1999. The commission is required to maintain equivalency with the federal regulations in order to maintain enforcement authority over facilities in the state affected by the regulations.

Owners and operators of hazardous waste incinerators, hazardous waste-burning cement kilns, and hazardous waste-burning lightweight aggregate kilns that attain compliance with MACT standards will be required to submit a one-time RCRA permit modification to remove provisions from the RCRA

permit that are also covered by an air quality permit. There are no known units of state and local government that own or operate these types of facilities; therefore, the commission anticipates that adoption of these federal standards into state rules will not result in increased costs to units of state and local government.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments would be protection of human health and the environment through the continued enforcement of hazardous waste permit requirements.

The proposed amendments are intended to adopt federal regulations requiring certain hazardous waste facilities to modify RCRA permits once the facilities have achieved compliance with MACT standards for hazardous air pollutants. These federal standards were adopted by the EPA in 1999.

Owners and operators of hazardous waste incinerators, hazardous waste-burning cement kilns, and hazardous waste-burning lightweight aggregate kilns that attain compliance with MACT standards will be required to submit a one-time RCRA Class 1 permit modification to remove provisions from the RCRA permit that are also covered by an air quality permit. The modification fee is \$150. The commission estimates that it will cost these facilities approximately \$1,500 to \$7,500 to prepare the permit modification. There are nine commercial incinerators, 26 on-site incinerators, and one waste-burning kiln that may be affected by the proposed amendments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed amendments, which would require affected facilities to modify RCRA permits once the facilities have achieved compliance with MACT standards for hazardous air pollutants. These federal standards were adopted by the EPA in 1999.

The commission estimates that there are no hazardous waste incinerators, hazardous waste-burning cement kilns, or hazardous waste-burning lightweight aggregate kilns that are owned and operated by small or micro-businesses. These equipment types are primarily used by large industries to burn hazardous waste generated by company manufacturing operations or to burn waste from other companies generated offsite. Therefore, the commission anticipates there will be no fiscal implications for small or micro-businesses for these provisions of the rulemaking.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the 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 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 amendments would update the commission's consolidated permits rules to incorporate certain federal regulations regarding air emission requirements and make administrative changes and corrections. The proposed 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 proposed 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 proposed 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 proposed 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 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 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 prepared a consistency determination for the proposed rules in accordance with 31 TAC §505.22 and 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, §§6901 et seq. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the proposed rule amendments will update and enhance commission rules concerning consolidated permits for certain hazardous and industrial solid waste facilities. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be mailed to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC-205, P. O. Box 13807, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments should reference Rule Log Number 2000-044-335-WS. Comments must be received by 5:00 p.m., July 23, 2001. For further information, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

STATUTORY AUTHORITY

The amendment 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 amendment implements THSC, Chapter 361.

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) - (2) (No change.)

(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) - (5) (No change.)

(6) **Corrective action management unit (CAMU) [or CAMU]** - An area within a facility that is designated by the commission under 40 CFR, [Code of Federal Regulations] 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) [the Texas Solid Waste Disposal Act, Texas Health & Safety Code), §361.303 (relating to Corrective Action)]. A CAMU shall only be used for the management of remediation wastes while [pursuant to] implementing such corrective action requirements at the facility.

(7) - (15) (No change.)

(16) **Facility** - Includes:

(A) (No change.)

(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); [Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.303 (concerning Corrective Action).]

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

(18) - (29) (No change.)

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

(31) - (35) (No change.)

(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 [Code of Federal Regulations], 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 [in Room B-20 of the Stephen F. Austin State Office Building, 1700 North Congress], 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) [the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.303 (concerning Corrective Action)]. 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 [Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action)], §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title [(relating to Corrective Action for Solid Waste Management Units)].

(38) - (41) (No change.)

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

(43) (No change.)

(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; [, the] Texas Water Code [,] ; and Texas Administrative Code regulations.

(45) - (47) (No change.)

(48) **Wastewater discharge permit** - A permit issued under [pursuant to the] Texas Water Code, Chapter 26.

(49) (No change.)

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

§305.69

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements THSC, Chapter 361.

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

(a) - (h) (No change.)

(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) [§63.1211], as amended through July 7, 2000 (65 FR 42292) [June 19, 1998, at 63 FedReg 33782], before a permit modification can be requested under this section. [; and]

(2) (No change.)

(j) (No change.)

(k) Appendix I. The following appendix will be used for the purposes of [Subchapter D] 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 proposed 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.

The proposed amendment implements THSC, Chapter 361.

§305.122. Characteristics of Permits.

(a) Compliance with a RCRA [Resource Conservation and Recovery Act (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) (No change.)

(2) are promulgated under [Title] 40 Code of Federal Regulations (CFR) [,] Part 268, restricting the placement of hazardous wastes in or on the land; [or]

(3) are promulgated under [Title] 40 CFR [Code of Federal Regulations,] 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 [CQA] 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) [Title 40 Code of Federal Regulations, §270.42 (concerning 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) - (d) (No change.)

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

§305.150

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements THSC, Chapter 361.

§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 [and adopted in the Code of Federal Regulations] through May 14, 1999 (64 FR 26315) [June 2, 1994, at 59 FedReg 28484].

SUBCHAPTER I: HAZARDOUS WASTE INCINERATOR PERMITS

§305.175

STATUTORY AUTHORITY

The new section is proposed 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.

The proposed new section implements THSC, Chapter 361.

§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 proposed 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.

The proposed amendment implements THSC, Chapter 361.

§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).