

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§305.69, 305.175, 305.571, and 305.572. Section 305.69 is adopted *with changes* to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1209). Sections 305.175, 305.571, and 305.572 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 federal hazardous waste program is authorized under Section 3001 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 United States Code, §6921 *et seq.* States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously exercised its prerogative to participate in the EPA's authorization program. Texas received authorization of its hazardous waste "base program" under the RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program for RCRA Clusters I and II on February 17, 1987. Texas submitted further revisions to its hazardous waste program and received final authorization of RCRA Clusters III through X on March 15, 1990, July 23, 1990, October 21, 1991,

December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000, and June 14, 2005.

To maintain authorization, the commission must adopt regulations that meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations to meet the changing federal regulations. The commission must adopt rule amendments that implement certain mandatory revisions to the federal hazardous waste program, which were made by EPA after June 30, 2000. In order for the State of Texas to maintain its RCRA authorization and continue to receive federal funding for the program, the mandatory federal rule changes in RCRA Clusters XI, XII, XIII, and XV must be incorporated into state rules.

This rulemaking includes the mandatory parts of RCRA Clusters XI, XII, XIII, and XV. 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 EPA. Additionally, the timely adoption of these federal rules allows the commission to continue receiving special project funding through the EPA Performance Partnership Grant.

The Hazardous Waste Combustion Maximum Achievable Control Technology (MACT) regulations are multi-media at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of Title 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this rulemaking under air quality regulations at Title 30 Texas Administrative Code (TAC) Chapter 113. This rulemaking

includes other parts of the federal combustion MACT program, which are codified at 40 CFR Parts 264, 265, 266, and 270. The adopted rule changes related to air quality are necessary to be consistent with previously adopted federal requirements.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

#### SECTION BY SECTION DISCUSSION

##### *Section 305.69. Solid Waste Permit Modification at the Request of the Permittee.*

The commission adopts an amendment to §305.69(i)(1) to conform to federal regulations promulgated in the May 14, 2001, issue of the *Federal Register* (66 FR 24270) and the February 14, 2002, issue of the *Federal Register* (67 FR 6968). This amendment revises Part B hazardous waste combustion facility permit modification requirements found in 40 CFR §270.42, to meet the emission standards at Part 63, Maximum Achievable Control Technology (MACT).

The amendment revises the Notice of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c), which are referenced in the permit modification procedures at 40 CFR §270.42 because the Washington D.C. Circuit Court vacated the NIC requirement effective October 11, 2000. Nonetheless, EPA determined that the court vacatur did not impact eligibility for streamlined modification because the court's mandate was not issued until after sources were required to submit their NIC.

The commission also makes changes from proposed language to update two citations and revise a subchapter heading.

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

The commission adopts an amendment to §305.175 to conform to federal regulations promulgated in the December 19, 2002, issue of the *Federal Register* (67 FR 77687). This amendment adds language that specifies information requirements for Part B of the application for a hazardous waste permit found in 40 CFR §270.19 for air emission controls for incinerators. This amendment corrects two technical errors in the requirements of the NESHAP Direct Final Rule, Interim Standards Rule, and Final Amendments Rule.

*§305.571. Applicability.*

The commission adopts an amendment to §305.571(b) to conform to federal regulations promulgated in the December 19, 2002, issue of the *Federal Register* (67 FR 77687). This amendment adds language that specifies information requirements for Part B of the application for a hazardous waste permit found in 40 CFR §270.22 for air emission controls for boilers and industrial furnaces burning hazardous waste. This amendment corrects two technical errors in the requirements of the NESHAP Direct Final Rule, Interim Standards Rule, and Final Amendments Rule.

*§305.572. Permit and Trial Burn Requirements.*

The commission adopts an amendment to §305.572(a) to conform to federal regulations promulgated in the December 19, 2002, issue of the *Federal Register* (67 FR 77687). This amendment adopts by

reference revisions to the options found in 40 CFR §270.235 for incinerators and cement and lightweight aggregate kilns to minimize air emissions. This amendment corrects two technical errors in the requirements of the NESHAP Direct Final Rule, Interim Standards Rule, and Final Amendments Rule.

The commission adopts an amendment to §305.572(a) by adding paragraph (6) to conform to federal regulations promulgated in the February 14, 2002, issue of the *Federal Register* (67 FR 6792). This amendment adopts by reference revisions to the options found in 40 CFR §270.235(a) and (b) for incinerators and cement and lightweight aggregate kilns to minimize air emissions from startup, shutdown, and malfunction events. This amendment replaces the vacated September 1999 NESHAP emissions standards.

In addition to the changes discussed previously, the commission adopts corrections to outdated citations.

#### 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.

Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition,

jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because 42 United States Code (USC), §6926(g), already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations.

Because the regulated community is already required to comply with the more stringent federal rules, the adopted equivalent state rules will not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

First, the rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the rulemaking to maintain authorization of the state hazardous waste program.

And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission adopts this rulemaking under Texas Water Code (TWC), §5.103 and §5.105 and under Texas Health and Safety Code (THSC), §361.017 and §361.024.

The commission solicited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 applies. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4).

The specific purpose of the rulemaking is to maintain state RCRA authorization by proposing state hazardous waste rules that are equivalent to the federal regulations. The rulemaking will substantially advance this purpose by adopting rules that incorporate and refer to the federal regulations.

Promulgation and enforcement of the rules will not be a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations.

The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules will not burden, restrict, or limit the owner's right to property and will not reduce the value of property by 25% or more.

**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 Coastal Management Program, 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 Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission prepared a consistency determination for the rule in accordance with 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is 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 USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rule amendments will update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies.

The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

SUBMITTAL OF COMMENTS

The comment period closed on April 9, 2007. No comments were received.

**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, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements Texas Health and Safety Code, Chapter 361.

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

(a) Applicability. 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 Permit and Registration 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 and for a Post-Closure Order; 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 of this section 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 and for a Post-Closure Order; 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; and

(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;

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.

(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 Treatment, Storage, 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 Treatment, Storage, 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 Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, 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 and for a Post-Closure Order; 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 Other Authorizations), and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; 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 Treatment, Storage, 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 Treatment, Storage, 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 Section 3004 of the Resource Conservation and Recovery Act, 42 United States Code §6924;

(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, Texas Government Code, Chapter 2001.

(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 Treatment, Storage, or Disposal Facilities), Chapter 335, Subchapter H, Divisions 1

through 4 of this title (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 Section 6921 of the Resource Conservation and Recovery Act Subtitle C ( Subchapter III Hazardous Waste Management, 42 United States Code §§6921-6939e), ; 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 40 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 have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c) that were in effect prior to October 11, 2000, as amended in 40 CFR §270.42(j) through February 14, 2002 (67 FR 6968), 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)

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'
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'
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'
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).....	1'

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 .....	1 <sup>1</sup>
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes .....	1 <sup>1</sup>
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 ..... 1<sup>1</sup>
3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director ..... 1<sup>1</sup>
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 <sup>1</sup>
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 <sup>1</sup>
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director.....	1 <sup>1</sup>
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director .....	1 <sup>1</sup>
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'
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).....	1'
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).....1'
  - 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 .....1'
  - 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).....	1'
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)(i), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....	1'
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
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- 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'
- 7. Changes in response action plan:
  - a. Increase in action leakage rate .....3
  - b. Change in a specific response reducing its frequency or effectiveness .....3
  - c. Other Changes .....2

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

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

The following modifications are applicable only to waste piles complying with 40 CFR

264.250(c).

1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity .....	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity .....	2
2. Modification of waste pile unit without increasing the capacity of the unit.....	2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit .....	1
4. Modification of a waste pile management practice .....	2
5. Storage or treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit.....	3
b. That do not require additional or different management practices or different design of the unit.....	2

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

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

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.....	3
2. Replacement of a landfill.....	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system .....	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....	2
5. Modification of a landfill management practice .....	2
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system .....	3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate	

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

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

7. Modifications of unconstructed units to comply with §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 of this title .....	1
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'
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'
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/Cl <sub>2</sub> , 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 .....	1'
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 .....	1'
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 .....	1'
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 .....	1'
 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 I: HAZARDOUS WASTE INCINERATOR PERMITS**

### **§305.175**

#### **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 TWC or other laws of this state; and under THSC, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment 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 (CFR) Part 63, Subpart EEE, the requirements of this subchapter do not apply, except those provisions the executive director determines are necessary to ensure compliance with 40 CFR §264.345(a) and 40 CFR §264.345(c), if the permittee or applicant elects to comply with 40 CFR §270.235(a)(1)(i). 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, §305.572**

#### **STATUTORY AUTHORITY**

The amendments are 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 TWC and other laws of this state and under THSC, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements the 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, the requirements of this subchapter do not apply, except those the executive director determines are necessary to comply with 40 CFR §266.102(e)(1) and §266.102(e)(2)(iii) if the permittee or applicant elects to comply with 40 CFR §270.235(a)(1)(i). 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).

**§305.572. Permit and Trial Burn Requirements.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through December 19, 2002 (67 FR 77687):

(1) §270.66(b) - Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amendment or modification shall proceed according to the applicable requirements of Subchapter D of this chapter (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) §270.66(c) - Requirements for Trial Burn Plans;

(3) §270.66(d) - Trial Burn Procedures, except §270.66(d)(3), and except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) §270.66(e) - Special Procedures for DRE Trial Burns; and

(5) §270.66(f) - Determinations Based on Trial Burn.

(6) §270.235 - Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers and Hydrochloric Acid Production Furnaces to Minimize Emissions from startup, shutdown, and malfunction events.

(b) With regard to trial burn notice procedures, the chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 CFR §270.66(d)(3)(i) - (ii) as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.