

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§305.69, 305.175, 305.571, and 305.572.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The federal hazardous waste program is authorized under Section 3006 of the Resource Conservation and Recovery Act (RCRA) of 1976. 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 Clusters I and II on February 17, 1987. Texas submitted further revisions to its hazardous waste program and received final authorization of 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 May 14, 2001. 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 Rule Clusters XI, XII, XIII, and XV must be incorporated into state rules.

This rulemaking includes the mandatory parts of RCRA Rule 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 encoded at 40 CFR Parts 264, 265, 266, and 270. The proposed 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 proposes amendments 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 would revise Part B hazardous waste combustion facility permit modification requirements to meet Part 63, Maximum Achievable Control Technology (MACT) standards, found in 40 CFR §270.42.

The amendment would revise 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 this requirement effective October 11, 2000. 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. This amendment is less stringent than the current rules.

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

The commission proposes amendments to §305.175 to conform to federal regulations promulgated in the December 19, 2002, issue of the *Federal Register* (67 FR 77687). This amendment would add 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 would correct two technical errors in the requirements of the NESHAPS Direct Final Rule, Interim Standards Rule, and Final Amendments Rule. This amendment is as stringent as the current state rules and must be adopted for consistency due to the requirements of the NESHAPS Direct Final Rule, Interim Standards Rule, and Final Amendments Rule that were previously adopted by the commission.

§305.571. Applicability

The commission proposes amendments 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 would add 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 would correct two technical errors in the requirements of the NESHAPS Direct Final Rule, Interim Standards Rule, and Final Amendments Rule. This amendment is as stringent as the current state rules and must be adopted for consistency due to the requirements of the NESHAPS Direct Final Rule, Interim Standards Rule, and Final Amendments Rule that were previously adopted by the commission.

§305.572. Permit and Trial Burn Requirements.

The commission proposes amendments 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 would adopt 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 would correct two technical

errors in the requirements of the NESHAPS Direct Final Rule, Interim Standards Rule, and Final Amendments Rule. This amendment is as stringent as the current state rules and must be adopted for consistency due to the requirements of the NESHAPS Direct Final Rule, Interim Standards Rule, and Final Amendments Rule that were previously adopted by the commission.

The commission proposes amendments to §305.572(a) by adding new paragraph (6) to conform to federal regulations promulgated in the February 14, 2002, issue of the *Federal Register* (67 FR 6792). This amendment would adopt 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 NESHAPS emissions standards. This amendment is as stringent as the current state rules.

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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management, determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or any other units of state or local government. No state agencies or local governments are known to own hazardous waste facilities or to generate hazardous wastes in sufficient quantities that would subject them to fiscal implications under the proposed rules.

The proposed rules are intended to revise the commission's rules to conform to specific federal regulations, promulgated after 2001, by incorporating these regulations either by reference or added language into Chapter 305. The commission is required to maintain equivalency with these regulations in order to maintain RCRA program authorization and enforcement authority over facilities in the state affected by the regulations.

In Texas, there are approximately 5,675 registered businesses or individuals that generate hazardous waste and approximately 200 permitted hazardous waste facilities that may be subject to the proposed rules and permitting standards. The proposed rules will amend standards for hazardous air pollutants for combustors as well as finalize national emission standards for hazardous air pollutants (NESHAP). In some cases, the proposed rules will enforce more stringent standards than current rules. In other cases, the proposal is expected to be less stringent than current agency rules. This fiscal note assumes that hazardous waste generators and permitted hazardous waste facilities are already in compliance with the federal standards being incorporated into the proposed amendments that are more stringent than current agency rules.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued compliance with federal law and the protection of human health and the environment through the state's adoption of federal standards pertaining to hazardous waste.

Where federal requirements have been more stringent than current state rules, owners or operators of incinerators, cement kilns, and lightweight aggregate kilns burning hazardous wastes may have already incurred additional costs to meet those standards. These costs may have varied greatly, from several thousand to several million dollars, depending on the facility, the type of equipment required to be updated, and the characteristics of each operation.

In some cases, current agency rules are more stringent than the amended federal requirements. The proposed rules, in implementing federal standards, eliminate the requirement to provide a notice of intent to comply with the NESHAP rule in 40 CFR Part 63, and may generate cost savings for those affected facilities. Most facilities have already complied with the notice requirements, but for those that have not, there may be a cost savings, which is estimated to range from \$100 to \$3,000 in consultant fees.

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 rules, which is intended to adopt federal regulations for hazardous waste. Staff does not anticipate that small or micro-businesses will operate the type of combustion facilities or generate the quantities of hazardous waste that will be subject to fiscal implications of the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 proposed rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the proposed 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 proposed 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 proposed 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 proposed rulemaking does not have an adverse material impact on the economy, the proposed rulemaking does not meet the definition of a major environmental rule. Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

First, the proposed rulemaking does not exceed a standard set by federal law because the commission proposes 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 proposed 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 proposed 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 proposed rulemaking to maintain authorization of the state hazardous waste program.

And fourth, the proposed 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 proposes 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 invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

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

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property. Specifically, the proposed 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 proposed 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 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 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 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, 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 proposed rule in accordance with 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed 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 proposed rule amendments will update and enhance the commission's rules concerning hazardous 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 submitted to Joyce Spencer, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-032-335-PR. The comment period closes April 9, 2007. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Ms. Cynthia Palomares of the Waste Permits Division at (512) 239-6079.

**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, §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 proposed 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 [Class I] Modifications).

(b) Class I modifications of solid waste permits.

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

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit 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) (No change.)

(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) (No change.)

(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) - (C) (No change.)

(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) - (D) (No change.)

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

(F) (No change.)

(3) - (6) (No change.)

(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) - (B) (No change.)

(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) (No change.)

(D) (No change.)

(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, [Processing,] or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) - (13) (No change.)

(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) (No change.)

(B) the requested modification does not comply with the appropriate requirements of Chapter 335, Subchapter F [Subchapter F, Chapter 335] of this title (relating to

Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing] or Disposal Facilities) or other applicable requirements; or

(C) (No change.)

(15) (No change.)

(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) - (C) (No change.)

(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) - (5) (No change.)

(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 [Request] for Reconsideration and Contested Case Hearings [Hearing]; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(e) (No change.)

(f) Temporary authorizations.

(1) - (2) (No change.)

(3) The temporary authorization request must include:

(A) - (B) (No change.)

(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, [Processing] or Disposal Facilities) and 40 Code of Federal Regulations (CFR) Part 264.

(4) (No change.)

(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, [Processing] or Disposal Facilities) and 40 CFR Part 264; and

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

(i) (No change.)

(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 Resource Conservation and Recovery Act, [(RCRA)]
§3004 (42 United States Code, §6924);

(iii) - (v) (No change.)

(6) (No change.)

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

(1) (No change.)

(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 [the] Government Code, Chapter 2001 [2002].

(h) Newly regulated wastes and units.

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

(A) - (B) (No change.)

(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, [Processing,] 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 Resource Conservation and Recovery Act [RCRA] Subtitle C (42 United States Code, Subchapter III), management standards; and

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

(2) (No change.)

(i) Combustion facility changes to meet 40 CFR [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 have complied [comply] 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) [July 10, 2000 (65 FR 42292)], before a permit modification can be requested under this section.

(2) (No change.)

(j) - (k) (No change.)

SUBCHAPTER I: HAZARDOUS WASTE INCINERATOR PERMITS

§305.175

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 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 proposed 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 [by conducting a comprehensive performance test and submitting a Notification of Compliance], 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 [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, §305.572

STATUTORY AUTHORITY

The amendments are 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 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 proposed amendment implements the THSC, Chapter 361.

§305.571. Applicability.

(a) (No change.)

(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 those [that] 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) [December 11, 1995 (see 60 FedReg 63417)]:

(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, [Modifications,] Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) - (5) (No change.)

(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 [Code of Federal Regulations] §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.