

The Texas Commission on Environmental Quality (TCEQ, agency or commission) adopts the amendments to §§305.43, 305.62, and 305.70 *with changes* to the proposed text as published in the November 30, 2007 issue of the *Texas Register* (32 TexReg 8681) and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking provides applicants a method of requesting a substantive change to a permitted municipal solid waste (MSW) facility through submittal of only those portions of a permit affected by the proposed change. These adopted rules specify that under certain criteria, the application, review, and any subsequent hearing for some substantive permit changes are limited to the specific requested change and directly related issues. This applies to most changes that currently meet the definition of a major amendment for an MSW facility.

This rulemaking also adopts additional changes to: 1) definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration; 2) specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice; 3) require public notice for some modifications which previously did not require notice and to require a major amendment for some permit actions previously processed as a modification with public notice; and 4) clarify that for municipal solid waste facilities, it is the duty of the owner of a facility to submit an application for a permit unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit an application.

Concurrent with this rulemaking, the commission adopts amendments to 30 TAC Chapter 330, Municipal Solid Waste, to revise the notice requirements for new permits and major amendments, and to revise the distance that public notice would be required for certain actions on permits and registrations.

SECTION BY SECTION DISCUSSION

Section 305.43, Who Applies

The commission adopts amendments to §305.43(a) to make a grammatical change; adopts the amendment to §305.43(b) by adding the word "industrial"; and adopts the addition of §305.43(c) to clarify that for MSW applications it is the duty of the owner of a facility to submit an application, unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit new applications. For a new facility, the operator may submit an application for a permit with the written consent of the owners of the land.

Section 305.62, Amendment

The commission adopts amendments to §305.62 to correct the reference to the title of §305.70 by changing Municipal Solid Waste Class I Modifications to Municipal Solid Waste Permit and Registration Modifications.

The commission adopts §305.62(i) to identify that a full permit application must be submitted if the permittee proposes an increase in the facility maximum permitted elevation or lateral extent, an increase in waste capacity, or upgrade of a facility to meet federal Subtitle D standards. The commission determined that some substantive changes to facility design or operation, such as an alternate liner design or the acceptance of a new waste stream, may in some circumstances have little or no impact on the

surrounding community, and could effectively be addressed through a new processing type referred to as a "limited application." The rule also allows other substantive changes to the permit to be proposed by submittal of only related permit documents and attachments. In these cases, a contested case hearing or other procedure related to the amendment would be limited to only the requested amendment and the related permit documents and attachments. The rule is revised from proposal to: 1) remove reference to the term "site operator"; 2) allow a lateral expansion for the purpose of adding to the buffer zone through a permit modification with public notice; 3) clarify reference to the volumetric capacity of a landfill and the maximum daily rate of waste acceptance at a Type V processing facility; and 4) clarify that the scope of any hearing or proceeding for major amendments submitted as a limited application is limited to only the portions of the permit and attachments to which changes are being proposed.

The commission deletes §305.70(m) and adopts §305.62(j) to move criteria related to temporary authorizations with adopted amendments to clarify an existing practice that temporary authorizations for MSW facilities may include actions that would be considered to be either major amendments or permit or registration modifications. The reference to an extension for six months for varying seasonal or climatic conditions was deleted because it was redundant and unnecessarily limiting.

Section 305.70, Municipal Solid Waste Permit and Registration Modifications

The commission adopts the amendment to §305.70(a) - (c), (e) - (g), (i) - (k), and (m). Subsection (n) has been relettered to §305.70(m). The adopted changes are discussed in the following paragraphs.

The commission adopts amended §305.70(a) to remove applicability dates for a 2001 - 2002 rulemaking and add rule applicability for applications filed prior to the effective date of these adopted rules.

The commission adopts amended §305.70(b) to reflect revised Chapter 330 rule citations, resulting from a rulemaking effective March 27, 2006.

The commission adopts amended §305.70(c) to remove a reference to the waste capacity increase in §305.70(k) which has been deleted from this adopted rulemaking, and clarifies that an increase in the waste acceptance rate at Type V processing facilities requires a major amendment for permitted facilities or a new registration for registered facilities. The rule was revised from proposal to remove reference to increases in landfill capacity, which are addressed in adopted §305.62(i). A reference to the applicable provisions in Chapter 330 for addressing increases in the waste acceptance rate at landfill facilities is adopted and the rule is revised from proposal to include reference to the section title. The commission determined that design and operational standards and other information provided in the Type V permit or registration application are based on a maximum waste acceptance rate and that these facilities have a much lesser ability to accommodate increases in waste acceptance than landfills, which are limited by total capacity.

The commission adopts amended §305.70(e)(3) and (5) to reflect revised Chapter 330 rule citations resulting from a rulemaking effective March 27, 2006.

The commission adopts amended §305.70(f) to clarify the number of marked and unmarked applications which must be submitted for a modification and how the copies are to be distributed between the Central and Regional TCEQ offices. A revised Chapter 330 rule citation, resulting from the rulemaking effective March 27, 2006, replaces the existing citation.

The commission adopts amended §305.70(g)(2) and (2)(A) and (B) which is revised from proposal to provide grammatical changes and include reference to comments that are timely filed.

The commission adopts amended §305.70(i) which is revised from proposal to provide clarification on the current landowner's list and to require that the Web site address for the application be provided in the mailed notice.

The commission adopts amended §305.70(j) which is revised from proposal to add clarification that modifications processed under this section do not require public notice and to renumber the paragraphs.

The commission adopts amended §305.70(j)(1), (4), (7), (9) - (11), (16), (18) - (22), (26), (27), and (30) (which were previously proposed as §305.70(j)(1), (4), (6), (8) - (10), (13) - (18), (22), (23), and (25), and which included reference to deleted paragraphs). The rule was revised from proposal to add new provisions under §305.70(j)(6), (12), (13), (17), and (28). Section 305.70(j)(1) - (33) is renumbered as §305.70(j)(1) - (32) (which was previously proposed as §305.70(j)(1) - (27)).

The commission adopts amended §305.70(j)(1) to refer to "cell" rather than "trench" to reflect current industry terminology regarding waste containment structures.

The commission adopts amended §305.70(j)(4) to restrict applicability to increases in sampling frequency. A modification which would require public notice for changes which decrease sampling frequency is adopted as §305.70(k)(5) (which was previously proposed as §305.70(k)(4)).

The commission deletes §305.70(j)(6) and the language is moved with revisions to §305.70(j)(28), (which was previously proposed as a modification requiring public notice in §305.70(k)(6)).

The commission adopts new §305.70(j)(6) which was added from proposal to allow changes to existing landfill underdrain or dewatering systems that maintain or improve effectiveness.

The commission adopts amended §305.70(j)(7) (which was previously proposed as §305.70(j)(6)) to remove examples of facilities or activities that could be added or deleted through a permit or registration modification without public notice. Requests to add or delete these facilities or activities had not been received by the commission and the language is removed only for purposes of brevity. The paragraph was revised from proposal to make a grammatical change.

The commission adopts §305.70(j)(8) (which was previously proposed as §305.70(j)(7)) for changes in the site layout, other than entry gate location, that relocate building locations.

The commission adopts amended §305.70(j)(9) (which was previously proposed as §305.70(j)(8)) to clarify applicability only to a solidification basin which was previously authorized.

The commission deletes §305.70(j)(10) which related to changes to a permit or registration regarding minimum performance based requirements for personnel or equipment. This was proposed for permanent deletion but is moved with language revisions to §305.70(j)(17).

The commission adopts amended §305.70(j)(10) (which was previously proposed as §305.70(j)(9)) to remove the ambiguity associated with the term "significantly" and to delete applicability to changes in final contours, which are the subject of adopted §305.70(k)(9) (which was previously proposed as §305.70(k)(7)).

The commission adopts §305.70(j)(11) (which was previously proposed as §305.70(j)(10)) to reflect revised Chapter 330 rule citations, resulting from a rulemaking effective March 27, 2006.

The commission adopts §305.70(j)(12) (which was previously proposed as a modification requiring public notice in §305.70(k)(10)) which was added from proposal to specify that changes in the sequence of landfill development may be authorized without public notice unless the changes would potentially affect the adjacent property owners or the community.

The commission deletes §305.70(j)(13) and moves the provision for changes to final contours and slopes to adopted §305.70(k)(9) (which was previously proposed as §305.70(k)(7)), which will require public notice.

The commission adopts §305.70(j)(13) which was added from proposal to allow changes in the perimeter access control system that do not reduce system effectiveness in controlling access to the site.

The commission adopts §305.70(j)(14) (which was previously proposed as §305.70(j)(11)) for corrections in the metes and bounds description of the permit or registration boundary.

The commission adopts §305.70(j)(15) (which was previously proposed as §305.70(j)(12)) for changes in the facility records storage area to an offsite location.

The commission adopts amended §305.70(j)(16) (which was previously proposed as §305.70(j)(13)) to more accurately reflect the purpose of the compost refund plan.

The commission adopts §305.70(j)(17) which was added from proposal to allow changes to the Site Development Plan or Site Operating Plan to provide performance-based standards for personnel or equipment, or minor corrections to provide consistency within the permit.

The commission adopts §305.70(j)(18) (which was previously proposed as §305.70(j)(14)) regarding the installation of replacement monitoring wells.

The commission adopts amended §305.70(j)(19) (which was previously proposed as §305.70(j)(15)) to remove applicability to the installation of a new leachate collection system. This activity would require public notice and be processed under adopted §305.70(k)(11) (which was previously proposed as §305.70(k)(8)).

The commission adopts amended §305.70(j)(20) (which was previously proposed as §305.70(j)(16)) to clarify applicability to installation of a landfill gas monitoring system when not required by permit (e.g., voluntary improvements; enforcement actions at MSW sites).

The commission adopts amended §305.70(j)(21) (which was previously proposed as §305.70(j)(17)) to clarify applicability only when changes in landfill gas monitoring system design result in equal or improved performance.

The commission deletes §305.70(j)(22) relating to liner special conditions and design constraints because it had rarely been used. Any future changes subject to the previous subsection could be processed under §305.70(l) without public notice.

The commission adopts amended §305.70(j)(22) (which was previously proposed as §305.70(j)(18)) to allow changes to an existing landfill gas collection system except as necessary to maintain compliance with standards in regulation (e.g., air performance standards), in addition to other permit requirements. The rule language allows executive director determination of the need for modification of the MSW Permit. The rule was revised from proposal to provide consistent reference to permits required by other rules and regulations.

The commission adopts §305.70(j)(23) (which was previously proposed as §305.70(j)(19)) for a new Groundwater Sampling and Analysis Plan or changes to an existing plan.

The commission adopts §305.70(j)(24) (which was previously proposed as §305.70(j)(20)) for a new waste acceptance plan or the addition of details for the acceptance of waste streams.

The commission adopts §305.70(j)(25) (which was previously proposed as §305.70(j)(21)) for revisions to an existing waste acceptance plan.

The commission adopts §305.70(j)(26) (which was previously proposed as §305.70(j)(22)), to reflect the applicable Chapter 330 subchapter, resulting from a rulemaking effective March 27, 2006. The rule was revised from proposal to allow the installation of wells of different depth and design if the wells are in addition to the wells in the existing monitoring system, and to clarify applicability of §305.62 to revised groundwater monitoring systems.

The commission adopts amended §305.70(j)(27) (which was previously proposed as §305.70(j)(23)). The rule was revised from proposal to provide applicability to landfill gas monitor wells.

The commission deletes §305.70(j)(28) and the language is moved to adopted §305.70(k)(12) (which was previously proposed as §305.70(k)(9)) which requires public notice.

The commission adopts §305.70(j)(28) for changes to closure or post closure care plans for technical corrections. A more-broadly worded provision is deleted from the list of modifications requiring public notice (previously proposed as a §305.70(k)(6)).

The commission adopts §305.70(j)(29) (which was previously proposed as §305.70(j)(24)) for substitution of an equivalent financial assurance mechanism.

The commission adopts amended §305.70(j)(30) (which was previously proposed as §305.70(j)(25)) to reflect revised Chapter 330 rule citations and headings, resulting from a rulemaking effective March 27, 2006.

The commission adopts §305.70(j)(31) (which was previously proposed as §305.70(j)(26)) for changes in the amount of financial assurance required for corrective action.

The commission deletes §305.70(j)(32) regarding sequence changes (which was previously proposed as a modification requiring public notice in §305.70(k)(10)) and moves the language to §305.70(j)(12).

The commission adopts §305.70(j)(32) (which was previously proposed as §305.70(j)(27)) for changes to the entry gate location that do not alter access traffic patterns.

The commission adopts the amendment to §305.70(k)(1) - (3), (6), and (8) (which was previously identified as §305.70(k)(1) - (3), (5), and (8)). The rule was revised from proposal to add new provisions under §305.70(k)(4), (7), and (8). Section 305.70(k)(1) - (6) is renumbered as §305.70(k)(1) - (13).

The commission adopts amended §305.70(k)(1) to reflect the revised Chapter 330 rule citation, resulting from a rulemaking effective March 27, 2006.

The commission deletes §305.70(k)(2), relating to increases in the height of a landfill. Applicable activities represent an increase in the maximum permitted height and/or an increase in waste capacity and will require a major amendment and submittal of a full permit application as described in adopted §305.62(i).

The commission adopts amended §305.70(k)(2), to reflect the applicable Chapter 330 subchapter, resulting from a rulemaking effective March 27, 2006.

The commission adopts amended §305.70(k)(3) to reflect the revised Chapter 330 rule citation and heading, resulting from a rulemaking effective March 27, 2006.

The commission deletes §305.70(k)(4), relating to upgrade of a landfill to meet the requirements in 40 Code of Federal Regulations (CFR) Part 258. An upgrade to meet 40 CFR Subtitle D standards will require a major amendment and submittal of a full permit application as described in adopted §305.62(i).

The commission adopts §305.70(k)(4) for changes to groundwater monitor well design that are consistent with the groundwater characterization and approved monitoring system design and that improve the effectiveness of the system in detecting contamination.

The commission adopts §305.70(k)(5) (which was previously identified as §305.70(k)(4)) to specify that changes that decrease sampling frequency (e.g., for groundwater and methane monitoring systems) are eligible to be authorized by a modification with public notice.

The commission adopts §305.70(k)(6) (which was previously proposed as §305.70(k)(5)) to remove a reference to the addition of a liquid waste solidification facility or a petroleum-contaminated soil stabilization area by a modification. Future requests for the addition of these facilities or areas could be processed as a limited application major amendment in accordance with §305.62. The activity identified in the proposed rule under §305.70(k)(6) for changes to closure or post-closure care plans was moved to

§305.70(j)(28) and revised to allow minor changes such as for changes to closure or post-closure care plans for technical corrections.

The commission adopts §305.70(k)(7). The rule was revised from proposal to allow changes to the legal description due to the addition of property for purposes of increasing the buffer zone by a permit modification requiring public notice.

The commission adopts §305.70(k)(8). The rule was revised from proposal to allow changes to the excavation plan with no increase in the landfill's maximum permitted elevation, depth or permitted capacity.

The commission adopts §305.70(k)(9) (which was previously proposed as §305.70(k)(7)) to specify that changes to the approved final contours and final slopes of a landfill may be authorized by modification with public notice, provided the changes do not result in a landfill height or capacity increase and there is no impact to off-site drainage.

The commission adopts §305.70(k)(10). The rule was revised from proposal to identify that alternative final cover designs may be authorized through a modification with public notice. The rule codifies an existing practice.

The commission adopts §305.70(k)(11) (which was previously proposed as §305.70(k)(8)) to specify that installation of a new leachate collection system may be authorized through a modification with public notice. The rule was revised from proposal to clarify applicability to leachate collection systems not

previously authorized. The rule was further revised from proposal to move the activity identified in the proposed rule under §305.70(k)(10) (relating to changes in the sequence of landfill development) to §305.70(j)(12) with a provision that public notice would be required if the change would impact the community.

The commission adopts §305.70(k)(12) (which was previously proposed as §305.70(k)(9)) to specify that changes to post-closure use of a landfill may be authorized through a modification with public notice.

The commission adopts §305.70(k)(13) (which was previously proposed as §305.70(k)(11)) to specify that name changes or transfers of MSW permits or registrations may be authorized through a modification with public notice. Notice is to be provided after issuance, as is current practice in some other TCEQ programs. The commission determined that community interest in the operation and ownership of MSW facilities make the addition of the proposed subsection appropriate.

The commission deletes §305.70(m) and moves language related to MSW temporary authorizations to adopted §305.62(j).

The commission adopts §305.70(m) to specify that the applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn the executive director's action on a modification application.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission invited public comment regarding the REGULATORY IMPACT ANALYSIS DETERMINATION during the public comment period. No comments were received. The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to §2001.0225, because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may 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.

The specific intent of the adopted rules is to provide applicants a method of requesting a substantive change to a permitted MSW facility through submittal of only those portions of a permit affected by the proposed change. The rules specify that under certain conditions the application, review, and any subsequent hearing for some substantive permit changes would be limited to the requested change and related materials. This will apply to most changes that currently meet the definition of a major amendment for an MSW facility. In addition, this rulemaking makes additional changes to clarify an existing practice, identify the administrative procedure for transfer of permit or registration ownership, and provide enhanced public notice and participation for some permit actions. The adopted changes: 1) definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration; 2) specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice; 3) require public notice for some modifications which currently do not require notice or require a major amendment for some permit actions currently processed

as a modification with public notice; and 4) clarify that for MSW facilities, it is the duty of the owner of a facility to submit an application for a permit unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit an application. It is not anticipated that the adopted rules will 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. The commission concludes that the adopted rules do not meet the definition of major environmental rule.

Furthermore, even if the rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these requirements. First, there are no applicable federal standards for MSW permits or registrations. Second, the adopted rules do not exceed an express requirement of state law in Texas Health and Safety Code, §361.061 and §361.079. Third, there is no delegation agreement that would be exceeded by the adopted rules. Fourth, the commission adopts these rules under the specific authority of Texas Health and Safety Code, §361.061 and §361.079. These rules

are also proposed under the authority of Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. Therefore, the commission does not adopt these rules solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the rules is to provide applicants a method of requesting a substantive change to a permitted MSW facility through submittal of only those portions of a permit affected by the proposed change; to clarify in rule the existing practice of authorizing temporary authorizations for either major or minor changes to a permit or registrations; to identify the administrative procedure for transfer of permit or registration ownership; and to provide enhanced public notice and participation for some permit actions. The adopted rules would substantially advance this stated purpose by specifying that under certain conditions the application, review, and any subsequent hearing for some substantive permit changes would be limited to the requested change and related materials. In addition, the rulemaking will: 1) definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration; 2) specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice; 3) require public notice for some modifications which currently do not require notice or to require a major amendment for some permit actions currently processed as a modification with public notice; and 4) clarify that for MSW facilities, it is the duty of the owner of a facility to submit an application for a permit unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit an application.

Promulgation and enforcement of these rules will be neither a statutory nor a constitutional taking of private real property because the rulemaking does not affect real property. In particular, there are no burdens imposed on private real property. In addition, the adopted rules do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and, therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

PUBLIC COMMENT

The commission held a public hearing in Austin on January 8, 2008. The comment period closed on January 15, 2008, and subsequently was extended to February 22, 2008, in response to requests from State Representative Richard Hardcastle and State Representative Larry Phillips.

Comments were received from McGinnis, Lochridge & Kilgore, L.L.P on behalf of Allied Waste Industries (Allied), Biggs & Mathews Environmental (B&M), Harris County Public Health & Environmental Services (HCPHES), Hutto Citizens Group (HCG), IESI TX Corporation (IESI), Indian Creek Homeowners Association of Carrollton (ICHA), Lowerre, Frederick, Perales and Allmon (LFPA), Malcolm Pirnie, Inc., San Antonio Office (MPI), National Solid Wastes Management Association (NSWMA), TCEQ Office of Public Interest Council (OPIC), Republic Waste Services of Texas, Ltd. (RWS), Russell & Rodriguez on behalf of Texoma Area Solid Waste Authority (TASWA), North Texas Municipal Water District (NTMWD), City of Arlington (COA), City of Corpus Christi (COCC), City of Dumas (COD), and City of San Angelo (SOSA), Lowerre & Frederick Attorneys at Law and Texas Campaign for the Environment (LF/TCE), Texas Disposal Systems (TDS), Texas Landfill Management (TLM), Lone Star Chapter of the Solid Waste Association of North America (TxSWANA), Waste Management of Texas, Inc. (WMTX), and seven individuals. Many commenters supported the rulemaking, however with suggested changes. Specific comments are addressed below.

RESPONSE TO COMMENTS

Scope and General Provisions

B&M stated the overall justification for the rulemaking appears to be unfounded. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that many of the proposed rules do nothing to protect property or the environment as required by the Texas Health and Safety Code, the rules serve only to

increase operator costs, the estimated fiscal impact appears to be significantly less than the actual cost to implement the rules, and that the rulemaking should be delayed for further consideration.

The commission disagrees that the rulemaking is unfounded or that it should be delayed. The commission agrees that some portions of the rule may result in higher costs for MSW facility owner/operators but believes that other portions of the rule will result in owner/operator savings. The rulemaking will better ensure identification of changes at a MSW facility which may affect property owners in the community and that individuals potentially affected by the proposed action will have an increased opportunity to comment and/or obtain information. The commission does not agree this is inconsistent with the responsibilities charged to the agency by the Texas Health and Safety Code and has adopted the rule.

Who Applies

Allied, IESI, and WMTX commented that §305.43 is consistent with the Resource Conservation and Recovery Act program and the Texas Health and Safety Code, that the rule does not have a history of problems. The same commenters and TxSWANA suggested that no changes are necessary at this time. Allied, IESI, and WMTX suggested if changes are contemplated a separate rulemaking would be appropriate and may be necessary for compliance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. HCG, one individual, LFPA, TASWA, NTMWD, COA, COCC, COD, SOSA, LF/TCE, TDS, and TLM commented that the rule should be amended to clarify the entity responsible for submitting an application. TLM commented that the rule should clarify that a contract operator does not submit the application. LF/TCE, TDS, and TLM also suggested that a separate subsection could be created to address municipal solid waste permit applications. HCG commented that

the definitions in Chapters 305 and 330 should be amended to clarify terms relating to the responsibility and operation of the facility. LF/TCE stated that the rule also should clarify who is identified on the permit.

The commission agrees that the section could be clarified regarding who is responsible for submitting an application for an MSW permit and on the terminology used for the various entities. In response to these comments, the commission has adopted changes to §305.43 to clarify that for MSW facilities, it is the duty of the owner of the facility to submit an application for a permit, unless a facility is owned by one person and operated by another, in which case the owner may authorize, in writing, the operator to submit an application.

Statutory Authority for Subchapter D

IESI suggested a typographical change to the Statutory Authority for Subchapter D.

The commission appreciates the comment and has made the correction.

Typographical error

IESI suggested a typographical change to §305.62(a).

The commission appreciates the comment but could not identify the typographical error and did not make a change in response to this comment.

Major amendments for MSW Permits

IESI, NSWMA, and RWS stated that the reference to "owner or operator" in §305.62(i) should be changed to "permittee" to provide consistency with term used in §305.62(a). TDS commented that the rule should be revised to provide a definition of "permittee."

The commission does not agree that the rule should be amended to include another new definition due to comments requesting clarification of the party responsible for submitting an application. However, in response to these comments the commission has removed the terms "owner or operator" from the rule language.

LF/TCE commented that any increase in the hours of waste acceptance or operation hours should be processed as a major amendment. LF/TCE also commented that a full application should be required for any permit amendment in which the permit provisions being changed resulted from negotiations with a protesting party or for reopening landfills that have been inactive for five years or more.

The commission does not agree that all changes in operating or waste acceptance hours should require a major amendment. Changes within the operating or waste acceptance hours specified in MSW regulations in §330.135 may be processed through a modification with public notice. The commission agrees that changes outside these hours or the addition of a new day of operation would require a major amendment, but has not amended the rule in response to this comment. The commission does not agree that a full application should necessarily be required for a request to change permit provisions that resulted from negotiations with a protesting party. The commission acknowledges that the change would require a permit amendment as specified in §305.70(a), and the proposed change would be subject to an opportunity for a contested case hearing. If only a

small portion of the permit was being affected, the requirement for a full application would be disproportionate to the proposed change and as a result, the commission has not amended the rule in response to this comment. Similarly, a major amendment would be required to reopen a landfill that has not accepted waste for five years or more but the application requirements would be subject to the requirements in §330.7(d), which restricts the permit amendment to land use compatibility in some cases. The commission has not amended the rule in response to this comment.

Increase in maximum elevation

Allied and TxSWANA commented that many sections of the permit are not impacted by vertical-only expansions and §305.62(i)(1) should be amended to allow these major amendments to be processed through submittal of only the affected portions of the permit. HCPHES stated that a full application should be required for an increase in the depth of a landfill due to the potential impact on landfill design. LF/TCE stated that the rule should be amended to include reference to any increase of any permitted elevation for a landfill and any increase in the landfill's maximum depth. TxSWANA commented that at a minimum, the rule should include an exemption from the requirement for a full major amendment application for the 10-foot height increase historically processed as a permit modification.

The commission does not agree that vertical-only expansions, including the 10-foot height increase, should be eligible for a major amendment through submittal of less than a full application and has not amended the rule in response to these comments. Depending on the facility acreage, vertical expansions can extend the life of a landfill many years into the future and it is appropriate that the entire application be updated to provide current information on the facility and comply with any

updated regulations. The commission does not agree that minor changes to excavation depth to accommodate cell construction when there is no gain in capacity should warrant submittal of a full application. The commission agrees that a significant increase in the depth of a landfill which also affects landfill design could occur but not without an increase in capacity which would require a full major amendment application. The commission has not amended the rule in response to these comments. Changes to the final contours, other than changes to the permitted maximum elevation, generally are requested to improve storm water runoff control, and may include an increase in the permitted elevation of side slopes. These changes, which previously had been processed without public notice, will be processed as a permit modification requiring public notice. The commission has not amended the rule in response to this comment.

Addition of Buffer

IESI commented that §305.62(i)(1) should be revised to clarify applicability to the permitted waste footprint. NSWMA and RWS stated that the rule should not include submittal of a full application for expansion of areas used for non-waste management activities such as buffer zone or employee parking.

The commission does not agree that expansion of any "non-waste management areas" is appropriate due to the potential for broad interpretation, but agrees that the addition or expansion of a buffer zone is beneficial to the community, and that it should not require a major amendment. The commission has amended §305.62(i)(1)(B) in response to these comments to exempt lateral expansions for the purpose of increasing the buffer zone, and has created a modification under §305.70(k) to allow the addition of property for the expansion of the buffer.

Waste Capacity

Allied, NSWMA, RWS, TASWA, NTMWD, COA, COCC, COD, and SOSA stated that the term "waste capacity" as used in §305.62(i)(1)(C) is unclear. Allied, IESI, NSWMA, RWS, and WMTX commented the rule should be amended to clarify applicability to volumetric capacity. Allied, IESI, and TxSWANA commented that the rule should be amended to allow increases in capacity resulting from design revisions (e.g., liner or final cover components) through other than a full application. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that increases in capacity are addressed in §305.62(i)(1)(A) and (B) making the subsection unnecessary. LF/TCE commented that the rule should be amended to include reference to any increase in the permitted or registered daily maximum limit of waste acceptance.

The commission agrees the rule requires clarification regarding applicability to the volumetric capacity of a landfill and the maximum processing capacity at a Type V facility, both of which historically have required a full application, and the commission has amended the rule accordingly. The commission notes that major amendments do not apply to registered facilities. The commission does not agree that all increases in capacity are already addressed in the rule because changes in depth or permitted contours can result in a capacity increase. Changes in excavation depth that result in a capacity increase and capacity increases due to design revision typically have been offset through a revision of other design details (e.g., final contours). Changes in capacity have been and will continue to be processed through submittal of a full amendment application. No changes to the rule were made in response to these comments.

SubTitle D Upgrades

RWS commented that upgrading a permitted facility to meet the requirements of 40 CFR Part 258 increases the facility's capability to protect human health and the environment and should not require a major amendment as required in §305.62(i)(1)(D).

The commission agrees that the upgrade may represent an increase in a facility's capability to be protective, but also believes the provision likely would be used for facilities that are proposing a significant change in operation or which have previously been closed, and that the authorization of these changes would more appropriately be processed through submittal of a full application. The rule was not amended in response to this comment.

Limited Applications

LF/TCE stated that submittal of a limited application to obtain a major amendment should not be allowed unless a rulemaking is initiated for either permit term limits or a periodic comprehensive review with public input. Five individuals commented that permits should have term limits to allow regular review and comment.

The commission does not agree that a rulemaking should be initiated for permit term limits or other periodic review prior to making some permit changes allowable through submittal of a limited application and has not amended the rule in response to these comments. The commission acknowledges that significant changes may be proposed through use of the rule's provision for limited applications but the changes must be protective of human health and the environment, they will be subject to an opportunity for contested case hearing, and they will not include changes that extend the life of the facility.

Allied commented that §305.62(i)(2) should be amended to clarify the rule's intent of mandatory submittal of only the portions of the permit being changed. B&M commented that it is unclear how the scope of the application will be determined. IESI commented that the rules should be revised to refer to "limited-scope major amendment" and that the rule should provide examples of allowable changes without submittal of a full application. LF/TCE, TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the rule is unclear on what changes may be eligible for submittal of a limited application to obtain a major amendment. TxSWANA commented that submittal of less than a full application for a permit major amendment may create a new avenue for appellate challenges to the agency's action.

The commission does not agree that submittal of less than a full application should be a mandatory requirement or that it is beneficial to specify a name in rule for limited scope application submittals and has not amended the rule in response to these comments. The commission anticipates that changes for which less than a full application is submitted will be limited in the range of technical issues. Upon request, the executive director's staff can help identify the parts of the application necessary to complete processing, dependent on the type(s) of change being applied for, or will make the determination if an incomplete application is submitted. Processing requests through use of a limited application has been in use historically in other agency programs and questions of scope have not been unexpectedly problematic. The commission agrees that some guidance is appropriate and has included in the rule the addition of an alternative liner design, changes in waste acceptance and operating hours outside hours identified in the rule or authorization to accept waste or operate on a day not previously authorized, and the addition of an authorization to accept Class 1 waste as examples of changes which may be requested through submittal of a limited

application. The commission does not anticipate that submittal of less than a complete application, when authorized by these rules, will result in appellate challenges to the agency's action. This is a practice which is followed in other programs within the TCEQ, and the commission is not aware of frequent litigation on this issue. One of the stated purposes of this rulemaking is to provide applicants a method of requesting a substantive change to a permitted MSW facility through submittal of only those portions of a permit application affected by the proposed change. The commission has statutory authority to adopt rules consistent with the Texas Health and Safety Code and establish minimum standards of operation for the management and control of solid waste under this chapter.

IESI commented that the rules should be revised to provide for agency consideration of design and operational issues previously adjudicated in limiting the scope of any hearing or proceeding on the application. TDS stated that the rule should be revised to clarify that applicants may use previously approved portions of applications that support the requested changes without having to resubmit the supporting application materials.

Major amendments are subject to an opportunity for contested case hearing and as such logically require that all application materials related to the requested changes be submitted as part of the application for review by the executive director and they must be available to the public. The commission does not agree that the use of or reference to previously submitted materials is acceptable or that previously adjudicated issues that will be affected by the requested changes should be considered as being outside the application process and has not amended the rule in response to comment.

HCPHES stated that the limitation on the executive director's review and any subsequent hearing or proceeding in §305.62(i)(2) should include all relevant materials and issues and should be revised to include additional information identified in §305.62(i)(3). HCPHES also commented that the term "processing" in §305.62(i)(3) could be construed as meaning only information necessary for administrative purposes and the rule should be revised to encompass any and all information requested by the executive director. LF/TCE commented that an applicant's limited submittal may not allow evaluation or a contested case hearing on other areas or features impacted as a result of the proposed changes. OPIC stated the rule should be revised to clarify applicability of a limited review, hearing, or proceeding to only major amendments subject to this section.

The commission does not agree that the limited application process will allow design or operational issues impacted as a result of the proposed changes to be exempt from evaluation or a contested case hearing, as it is the applicant's responsibility to submit any affected portions of the application. The commission acknowledges that there may be issues that are relevant to the proposed changes that are not immediately recognized by the applicant and that all necessary application materials may be not provided in the initial submittal. If this information is not submitted it will be requested by the executive director in accordance with the rule. The commission has not amended the rule in response to this comment. The commission agrees that the limitation on the executive director's review and any subsequent hearing or proceeding should include any additional relevant materials and issues as identified in §305.62(i)(3) and also agrees that applicability of a limited review, hearing, or proceeding is only to major amendments being processed under provisions for submittal of a limited application and has revised the rule in response to these comments.

HCPHES stated that language should be added to allow the executive director to obtain information from the applicant at the request of local governments with jurisdiction, and to provide the local governments with copies of any application and materials submitted to the executive director.

The commission has not amended the rule in response to requests that the rule provide for local governments with jurisdiction to be given information or copies of materials provided to the executive director. The commission notes that there is not a corresponding requirement in Chapter 330 that applications for new permits or amendments be provided to local governments or pollution agencies with jurisdiction. These entities will be notified of the agency's receipt of an application and intent to obtain a municipal solid waste permit amendment and the application will be available online and at a public place.

Temporary Authorizations

LF/TCE commented that temporary authorizations, as identified in §305.62(j), should not include major changes to a permit and that they should be allowed only in extreme cases or unforeseen circumstances and limited to a shorter duration than is currently allowed. LF/TCE also commented that the rule should be revised to specify what materials may be authorized for limited use as an alternate daily cover (ADC) material, and should require a major amendment process to authorize any other materials proposed for use as ADC. LFPA commented that the rule should require TCEQ staff to provide the commission with regular reports on the temporary authorizations issued and the justification for issuance. TxSWANA stated that the requirement that temporary authorizations not reduce the capability of a facility to protect human health and the environment might be interpreted as meaning applicability to only minor changes in

spite of rule language to the contrary and that the rule should be revised to clarify intent. IESI commented that the rule should be amended to clarify applicability of the executive director's response to a verbal request.

The commission does not agree that temporary authorizations should be restricted to minor changes and has not revised the rule in response to this comment. Actions necessary to prevent the disruption of solid waste management activities represent the most significant use of temporary authorizations. Circumstances sometimes arise that require authorization of activities considered to be a major change such as a temporary placement of waste above approved final contours, to prevent a solid waste crisis in a community. During natural disasters or emergencies situations, the executive director must have flexibility in the types and duration of allowable changes to authorize the activities necessary to protect human health and the environment. The commission does not agree that it is practical or appropriate to identify the types of allowable ADC in rule or to require a major amendment to use an ADC, and has not revised the rule in response this comment. MSW regulations provide standards for alternative daily cover including its effect on vector, fires, odors, and windblown waste and landfill owner/operators should have the flexibility to propose any number of materials if compliance with the rule can be demonstrated. The temporary authorization allows the TCEQ an opportunity to determine the material's effectiveness in the field prior to approval of permanent use. If the material meets rule requirements, it represents a minor change to landfill operation. Temporary authorizations are infrequently issued and are generally for routine purposes such as changes in operating hours for special events. Information on temporary authorizations, as with other agency activities, is always available to the commission. Requiring that this information be provided to the commission is disproportionate to the action,

and the rule was not amended in response to this comment. The commission does not agree the rule needs clarification regarding applicability to major changes or the method of request to which the executive director may provide a verbal response and has not amended the rule in response to these comments. The rule plainly states applicability to both major and minor changes and the rule's intent is to allow an expeditious processing when a verbal response from the executive director is appropriate for a request received either verbally or in writing.

Permit and Registration Modifications

B&M and TxSWANA commented that revision of the permit modification system appears unnecessary. ICHA commented that full public review of the permit should be allowed for some current modification requests. IESI commented that it would be helpful to retain a reference within §305.70 to the location of rules relating to the processing of temporary authorizations. LF/TCE commented that only changes with no potential off-site impact should be processed as a modification. TxSWANA commented that a new modification should be added to either the "j" or "k" lists of allowable modifications to provide for the relocation of "an authorized unit or area within the facility" and for the use of an alternate final cover.

The commission does not agree that revision of the regulations regarding modifications to permits and registrations is unnecessary and has proceeded with a rulemaking which includes an increase in the distance that mailed notice will be provided for certain actions relating to MSW permits and registrations, public notice for some modifications which currently do not require notice, and a major amendment for some permit actions currently processed as a modification with public notice. As part of the commission's duties in protecting human health and the environment, the commission believes it is necessary to increase the likelihood that potentially affected parties will be

informed when certain changes to an existing MSW facility are being proposed. The opportunity for comment better ensures that the executive director can be provided input on any unknown or unanticipated conditions that would result from approval of a proposed activity and which may affect the decision to approve the proposed change. The commission does not agree that modification requests should open the entire permit for public review or that it is necessary to revise the rule to further address potential off-site impacts. Permit and registration modifications represent minor changes to facility operation or design. These minor changes should not result in off-site impacts and review of other portions of the permit which are not relevant to the proposed change which would unnecessarily hinder the modification process. The commission has not amended the rule in response to these comments. The commission agrees that alternative final cover designs should be included in the list of modifications which require public notice. This codifies an existing procedure for processing changes in final cover design and the commission has created a new modification to identify this activity in §305.70(k). The commission does not agree that a reference to the rules for processing temporary authorizations is necessary within §305.70 or that a modification allowing relocation of "an authorized unit or area within the facility" is appropriate due to the open definition of this term, and has not revised the rule in response to these comments.

Maximum Limit of Waste Acceptance

IESI commented that §305.70(c) should be amended to clarify applicability to landfill volume, to remove the specific regulatory citation relating to requirements for a full application for amendments, and to complete the regulatory reference to Recordkeeping Requirements in §330.125(h). LF/TCE indicated that increases in the permitted daily maximum limits of waste acceptance for facilities other than Type V

facilities should be processed as a major amendment. TDS commented that if the facility has the ability to process a waste volume which exceeds a permitted or registered maximum daily limit of waste acceptance without necessitating a change in facility design, equipment, or staffing patterns, the increase should be allowed as modification without public notice. WMTX commented that the rule should be amended to delete reference to an increase in landfill capacity and should include reference to §305.62(i)(2) for Type V major amendment applications to provide consistency between the two sections.

The commission does not agree that Type V facilities should be allowed to increase the maximum waste acceptance rate by any means other than a full application for a permit amendment or a new registration and has not amended the rule in response to these comments. Many Type V facilities currently in operation were authorized prior to the last two major revisions of application requirements in Chapter 330. The daily limit of maximum waste acceptance is one of the few substantive or limiting provisions for Type V operations. Many of these facilities could increase the waste acceptance rate exponentially with few or no design changes but with a large potential for an impact to the surrounding community. It is therefore appropriate and has been the historic practice in the program to require that the entire application be updated to provide current information and ensure compliance with current regulations. The commission does not agree that a change in the waste acceptance rate for facilities other than Type Vs should require a major amendment. This was clarified in the March 2006 Chapter 330 revisions and today's rule was not amended in response to this comment. The commission agrees that deletion of the reference to the landfill capacity is appropriate and has amended the rule both in response to this comment and to provide consistency with the waste capacity increases described in §305.62(i). The commission also has completed the regulatory reference to §330.125(h) in response to comment.

Application processing

HCPHES stated that local governments with jurisdiction should be provided a copy of any materials provided to the executive director, consistent with the 2006 revisions of Chapter 330. LF/TCE commented that the rule should be revised to require that the applicant also submit two unmarked copies and one marked copy to the TCEQ regional office.

The commission does not agree that §305.70(f) should require applicants to provide local governments with jurisdiction copies of all materials submitted to the executive director or that the applicant be required to provide other copies in addition to what is currently required to the TCEQ regional office and has not amended the rule in response to these comments. Chapter 330 was revised in March 2006 to require that any application that requires public notice be placed on the internet. Interested persons and local regulating entities will receive the Notice of Application and Preliminary Decision and may view the application online. The commission has amended §305.70(i) to require that the mailed notice provide the Web site address where the modification application may be viewed.

IESI commented that §305.70(g) should be amended to provide reference to the more general section on amendments to allow future flexibility, stated that rule language should be revised to refer to the timely receipt of public comments and offered grammatical and a clarifying change to §305.70(g)(2).

The commission does not agree that the more general reference to §305.62, which discusses other than major amendments, is more appropriate than the existing reference to §305.62(c) which

defines a major amendment, and has not revised the rule in response to this comment. The commission agrees the rule intends reference to comments that are timely received, and has amended the rule to include this reference and the suggested grammatical changes.

IESI suggested a typographical change to §305.70(i). One individual stated the rule should clarify if the landowner's list is to be current when the application is submitted or upon the completion of technical review.

The commission appreciates the comment and has made the typographical change. The commission agrees that the rule should be clarified to require that the landowner's list be current as of the date it is submitted to the executive director and has amended the rule in response to this comment.

Modifications which do not require public notice

Allied and TxSWANA commented that the rule should be amended to clarify that modifications processed under this section do not require public notice. Five individuals stated that many non-notice modifications should require public notice. LF/TCE stated that all modifications should require some form of public notice.

The commission agrees that the rule should be amended to clarify that modifications processed under §305.70(j) do not require public notice and has revised the rule in response to this comment. The commission does not agree that all changes should require some form of public notice. No specific activity was identified by the individual commentors as inappropriate for processing

without public notice and no changes to the rule were made in response to this comment. MSW facility owner/operators must be able to make minor changes necessary to day-to-day operations without an unreasonable delay when those changes pose no threat to human health or the environment. The modifications identified in §305.70(j) are intended to allow activities that do not impact the community. The commission does not agree that these activities should require public notice and the rule was not amended in response to these comments.

LF/TCE commented that authorization for the activities identified in §305.70(j)(1), (5), (15), (16), (19), and (27) should be processed as a modification with public notice or as a major amendment.

The commission does not agree that these activities should require public notice and has not revised the rule in response to these comments. When a landfill has an existing authorization to accept more restrictive waste stream(s), such as the acceptance of Type IV material at a Type I landfill, the construction and placement of the Type IV material in a designated cell under §305.70(j)(1) is an operational matter with no potential impact. The Soils and Liner Quality Control Plan (SLQCP) provides construction criteria and testing procedures. Requests for a modification under §305.70(j)(5) would typically relate to revised testing procedures or changes in minor design details. Otherwise, changes such as alternative liner designs require submittal of a major amendment application with an opportunity for contested case hearing, making public notice to add the SLQCP redundant. Processing changes to an existing leachate collection system design under §305.70(j)(15) allows minor changes to design or construction materials. Changes which constitute a new collection system require public notice in accordance with §305.70(k)(8). The installation of a new landfill gas monitoring system not required by the permit as allowed by §305.70(j)(16) is more

protective of human health and the environment and beneficial to the community. Modifications submitted under §305.70(j)(19) for a new Groundwater Sampling and Analysis Plan (GWSAP) or changes to an existing plan would include the addition of a plan where one previously was not required, or to minor revisions to previously approved plans such as acceptable sampling procedures or laboratory analytical methods. Public notice would be required for corrective action activities or redesign of the monitoring system that would otherwise result in significant changes to the GWSAP. Changes to the entry gate location that do not alter traffic patterns as allowed in §305.70(j)(27), is clearly restricted by rule to changes which have no effect on the surrounding community and should be allowable without public notice.

Allied, IESI, and TxSWANA commented that §305.70(j)(2) should be amended to clarify applicability to the "maximum" depth of excavation.

The commission does not agree the intent of the rule is to allow any changes in excavation that are within the limit of the maximum depth, and has not amended the rule in response to this comment. The maximum depth of excavation can vary dramatically from one part of the site to another, and allowing any excavation less than the maximum depth is overly broad in its potential impact to site design for this category of modification.

IESI suggested a grammatical correction. LF/TCE commented that changes to a site layout plan in §305.70(j)(6) that add a registered facility should be processed as a modification with public notice or as a major amendment.

The commission appreciates the comment on the grammatical error and has made the correction.

Public notice and the opportunity to request a public meeting are part of the application procedures required for activities conducted under an MSW registration. The registration identifies where the activity will be conducted and the application will have been placed on a Web site for public access. The commission does not agree that a requirement for additional opportunity for comment is necessary and the rule has not been amended in response to this comment.

IESI and WMTX noted that §305.70(j)(8) should be amended to remove a typographical error.

The commission appreciates the comment and has corrected the error.

LF/TCE commented that only de minimus changes to internal drainage should be allowed without public notice in §305.70(j)(9). TXSWANA commented that the ability to revise top and side slopes contours should not be deleted if there is not an impact to off-site drainage.

The commission does not agree that only de minimus changes to internal drainage are allowable and has not amended the rule in response to this comment. Changes that affect only internal storm water run-on and run-off have no potential to impact the public and should not be subject to notice requirements. The reference to top and side slope revisions allowed an undefined degree of change and is deleted to provide consistency with §305.70(k)(7), regarding changes to the final contours.

The commission does not agree the activity is appropriate without public notice and has not amended the rule in response to this comment.

IESI suggested an amendment to §305.70(j)(10) to reflect updated terminology. LF/TCE commented that authorization for this activity should be processed as a modification with public notice or as a major amendment.

The commission has amended the rule to update the terminology in response to comment. The commission does not agree that public notice or a major amendment should be required to add details necessary for acceptance for a waste stream that has been authorized through the full permit process. The permit process includes an opportunity to request a contested case hearing on acceptance of the waste stream. This makes a subsequent public notice redundant and the commission has not amended the rule in response to this comment.

IESI commented that §305.70(j)(11) should be amended to allow changes to the legal description, with no change to the waste management area, other than those changes that reduce the size of the facility.

The commission agrees the addition of property to increase the buffer zone should be allowable by a permit modification with public notice and has added a modification to §305.70(k) to identify this activity. The commission has not revised §305.70(j)(11) in response to this comment.

IESI suggested a clarifying change to §305.70(j)(14) to allow non-substantive changes to well depth or design. TxSWANA commented that the rule should be amended to allow the installation of additional wells at depths different than those in the approved monitoring system.

The commission does not agree that the suggested revision relating to non-substantive changes provides further clarification, and has not revised the rule in response to this comment. The commission has not revised §305.70(j)(14), which is to be used to authorize the replacement of damaged or inoperable wells. However, the commission agrees that the installation of additional wells in an existing monitoring system is more protective and in response to this comment has amended §305.70(j)(22) to allow this activity.

WMTX and one individual stated that §305.70(j)(17) should be amended or a new section added to allow changes to the Landfill Gas Management Plan, as is currently provided in the rule for changes to the Groundwater Sampling and Analysis Plan or the Soils and Liner Quality Control Plan. IESI commented that a new modification could be created for this purpose. LF/TCE commented that authorization for this activity should be processed as a modification with public notice or as a major amendment.

Actions processed under §305.70(j)(17) "maintain or improve" the monitoring system design and a site's ability to detect landfill gas migration. The commission does not agree that this should require a waiting period or a major amendment application, and has not revised the rule in response to this comment. The commission also does not agree that creation of a new modification is necessary and has not amended the rule in response to this comment. The large majority of activities which require modification to the Landfill Gas Management Plan currently are processed under existing provisions in §305.70(j) or §305.70(k).

One individual stated that §305.70(j)(18) should clarify the timing of the executive director's determination on the necessity for a modification. LF/TCE commented that authorization for this activity should be processed as a modification with public notice or as a major amendment.

The commission does not agree the rule requires clarification regarding the executive director's determination. The rule states that notification is to be made subsequent to changes made per other permits or regulations, and the rule has not been amended in response to this comment. For consistency within the same section, the rule has been amended to repeat reference to other "rules, or regulations" regarding the notification. The commission does not agree it is appropriate to delay changes such as replacement wells for a gas collection system which is necessary to maintain compliance with MSW regulations, by requiring public notice or a major amendment. The gas collection system controls landfill gas migration and is of primary importance for the protection human health and public safety. Public notice is required for the installation of a landfill gas collection system if regulatory levels have been exceeded, in accordance with §305.70(k)(4), and the commission has not amended §305.70(j)(18) in response to this comment.

LF/TCE commented that submittal of a new waste acceptance plan or changes to an existing plan as allowed in §305.70(j)(20) and (21), should be processed as a modification with public notice or as a major amendment.

The waste acceptance plan identifies the procedures to be used by a facility in the acceptance of waste streams already authorized by the permit and does not provide for the addition of new waste streams. The commission does not agree that public notice or a major amendment should be

required to add or revise sampling and/or testing criteria for the acceptance of a waste stream that has been authorized through the full permit process. The permit process includes an opportunity to request a contested case hearing on acceptance of the waste stream making a subsequent public notice period redundant, and the commission has not amended the rule in response to these comments.

Allied commented that §305.70(j)(22) should be amended to allow upgrades to the monitoring system if there is no decrease in the depth or number of monitor wells. Allied and TxSWANA commented the rule should allow an increase in the number of wells or the installation of wells at depths greater than those in the approved monitoring system. IESI suggested clarifying change to the rule language and allowance of non-substantive changes to well design. LF/TCE commented that any changes to the existing groundwater monitoring system should be processed as a modification with public notice or as a major amendment.

The commission does not agree that all changes to an existing groundwater monitoring system, such as an upgrade which improves the ability of a facility to detect contamination, should require a major amendment and has not amended the rule in response to this comment. However, the rule has been amended, as discussed below, to require public notice for certain changes to the monitoring system. The commission agrees that the installation of additional wells to the existing monitoring system is more protective and has amended the rule to identify this activity. The commission understands that field conditions sometimes generate a need to revise well depth or screened-interval depth, and these changes should be allowable if consistent with the groundwater characterization and overall groundwater monitoring system design and if they improve the ability

to detect contamination. The commission does not agree that changes in the monitor well design such as screened interval depth should be processed without public notice after a groundwater monitoring system has been certified and approved, and the commission has created a modification under §305.70(k) to allow proposal of this activity. The commission has amended §305.70(j)(22) to clarify that submittal of a major amendment applies to changes to an approved groundwater monitoring system design resulting from changes in groundwater characterization.

IESI, one individual, and WMTX stated that §305.70(j)(23) should be amended to include the plugging of landfill gas monitoring wells for consistency with §305.70(j)(14). LF/TCE commented that any changes to the existing groundwater monitoring system should be processed as a modification with public notice or as a major amendment.

The existing rule language is clear that this modification is for plugging wells in conjunction with other activities that also require executive director review and approval, some of which may require public notice. Consequently, the commission does not agree that plugging wells under this provision should require public notice or a major amendment and has not amended the rule in response to this comment. The commission agrees that the language should be consistent with §305.70(j)(14) regarding applicability to landfill gas or groundwater monitoring wells and has amended the rule in response to these comments.

LF/TCE commented that changes to the closure or post-closure cost estimate in §305.70(j)(25) that result in a decrease in the financial assurance required should be processed as a modification with public notice or as a major amendment.

The regulation in §305.70(j)(25) specifies applicability to only decreases in the cost estimate which result from a decrease in the maximum area requiring closure. This would apply to an area of the landfill that has reached capacity and placed final cover, which is the routine progression in the facility life, or from a portion of the landfill being removed from the permitted area. The commission does not agree that either of these activities should require public notice or a major amendment and has not amended the rule in response to this comment.

New "(j)" modifications

Allied and WMTX commented that the list of modifications that do not require public notice should be amended to identify changes to existing landfill underdrains or dewatering systems that result in equivalent performance, and changes in the design and operations of waste processing and storage facilities that do not increase the authorized loading capacity of the unit. Allied, IESI, and WMTX stated that changes in the perimeter access control system should not require public notice. Allied commented that the modification previously identified under §305.70(j)(10), relating to performance based standards for personnel or equipment, should not be deleted but should be clarified, and with IESI commented that minor changes to the Site Operating Plan or Site Development Plan should be allowed without public notice.

The commission agrees that several of these activities currently are processed without public notice, have no negative impact on the community, and should be identified as allowable changes under §305.70(j), such as changes to existing landfill underdrains or dewatering systems that do not reduce effectiveness of the system, changes in the perimeter access control system that do not

reduce system effectiveness in controlling access to the site, and changes to provide performance based requirements for personnel and operating equipment. In response to these comments, the commission has created new modifications listed in §305.70(j) to identify these activities. The commission does not agree that "changes in the design and operations of waste processing and storage facilities that do not increase the authorized loading capacity of the unit" clearly defines the changes that could be made under this provision. The commission agrees that some of the identified activities, such as changes to contaminated water storage units or adding sewer connections have no impact to the community and would be processed by the executive director without a requirement for public notice. However, other activities allowable under the proposed language would be open to interpretation and the commission has not amended the rule in response to this comment.

Modifications which require public notice

NSWMA questioned the need for public notice when activities result in little or no impact to the public and urged the commission to balance costs with the need for public notice. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the modifications changed from no-notice to notice mods generally do not impact the public, do not increase the facility's ability to protect human health and the environment, will increase costs and should not require public notice. TASWA, NTMWD, COA, COCC, COD, and SOSA commented the executive director should make a case-by-case determination on the need for public notice for these activities.

No specific activity was identified by NSWMA as unnecessarily requiring notice and no changes to the rule were made in response to this comment. The commission acknowledges that the rule could

result in higher costs when public notice is required, and has attempted to better achieve the balance requested. Two activities, changes to closure or post-closure plans and changes in sequence of landfill development, have been moved from the list of modifications requiring notice to the list of activities authorized under §305.70(j). The commission does not agree that notice should not be required for the remaining activities moved from §305.70(j) to §305.70(k) or that these activities provide no additional protection of human health and the environment. These activities have a higher potential to impact adjacent landowners or the community and providing notice of the activity allows the public to obtain information on waste processing and disposal activities being conducted in their area. The commission does not agree that executive director discretion for public notice should be written into the rule for these activities and has not amended the rule in response to these comments.

Alternative daily cover

LF/TCE commented that the authorization under §305.70(k)(1) for alternative daily cover material use for any length of time should be processed as a major amendment.

The commission does not agree that a major amendment should be required to use an ADC material and has not revised the rule in response to this comment. MSW regulations provide standards for alternative daily cover materials. If compliance with the rule can be demonstrated for the proposed ADC, landfill owner/operators should have the ability to propose a material for ADC use and demonstrate that it is effective and that it poses no endangerment to human health and the environment.

More restrictive waste streams

LF/TCE commented that any changes to incoming waste streams as identified in §305.70(k)(2) should be processed as a major amendment.

The establishment of a more restrictive waste stream results in a landfill operation that has less potential to impact human health and the environment and less impact to the community. The commission does not agree this activity should require a major amendment and has not amended the rule in response to this comment.

Landfill gas remediation systems

LF/TCE stated that the installation of a landfill gas collection system for remediation as identified in §305.70(k)(3) should be processed as a major amendment.

The commission does not agree the installation of a gas collection system necessary to remediate landfill gas concentrations which exceed the regulatory levels and which pose a potential risk to human health and public safety should be delayed by requiring a major amendment. The public notice provided with the permit modification alerts the community that action is being taken to address the presence of the landfill gas and provides an opportunity to obtain additional information. The commission has not revised the rule in response to this comment.

Reduction in sampling frequency

RWS, TASWA, NTMWD, COA, COCC, COD, and SOSA commented that a decrease in sampling frequency does not change the facility's ability to protect human health and the environment and should

not require public notice. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the executive director should make a case-by-case determination on the need for public notice for this activity. LF/TCE commented most decreases are not more protective and should be processed as a major amendment.

The commission does not agree that public notice should be discretionary or that a major amendment should be required for this activity and has not amended the rule in response to these comments. The groundwater sampling program provides a demonstration that a facility's design and operation is protective of human health and the environment. This is of significant interest to the surrounding community and the commission does not agree that a reduction in sampling should be excluded from public notice and the opportunity it provides to obtain additional information. However, requiring a major amendment in circumstances where the reduced frequency is equally protective of human health and the environment would be disproportionate to the nature of the change that is included in this rule.

Relocation of liquid waste solidification

Allied commented that §305.70(k)(5) should be amended to allow the relocation of other authorized waste treatment units. LF/TCE stated that authorization to add or relocate liquid waste solidification or contaminated soil stabilization should be processed as a major amendment.

The commission agrees that the addition of a new solidification or stabilization area would require a major amendment and authorization for this activity by permit modification was deleted from the proposed rule. Changes under §305.70(k)(5) are for previously-approved treatment units. The

commission agrees the public should have an opportunity to comment on potential impact of the relocation, but the commission does not agree that a major amendment is appropriate for this change and has not revised the rule in response to this comment. The reference to other authorized waste treatment areas is overly-broad in its applicability and subject to open interpretation and the commission has not amended the rule in response to this comment.

Closure or post-closure care plans

One individual and IESI commented that §305.70(k)(6) should not require public notice for minor technical changes to the closure and post-closure care plans. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the activity does not represent a significant change in the facility's ability to protect human health and the environment and should not require public notice or should allow the executive director to make a case-by-case determination on the need for public notice for this activity. LF/TCE stated that authorization for the changes should be processed as a major amendment. WMTX commented that significant changes to the closure and post-closure care plans would be accommodated by other modifications identified in §305.70(k) and that other changes to the plans should be allowed without public notice.

The commission agrees that the rule should allow minor technical changes such as updated testing procedures to be made to closure or post-closure care plans without public notice, and that significant changes to the site affecting these plans would be accommodated by other modifications that require public notice in §305.70(k). The commission has amended its rule by adding specificity for relatively minor technical changes and moved this activity to the list of modifications which do

not require public notice in §305.70(j)(28). The commission asserts that changes processed under the more narrowly-worded modification should not require public notice or a major amendment.

Changes to final contours

IESI suggested that §305.70(k)(7) be amended to clarify reference to adverse impacts to off-site drainage.

LF/TCE commented that authorization for this activity should be processed as a major amendment.

TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the activity does not represent a significant change in the facility's ability to protect human health and the environment and should not require public notice or should make a case-by-case determination on the need for public notice for this activity. TxSWANA stated that public notice should not be required if there is no impact to off-site drainage, no increase in disposal capacity, and only minor configuration changes.

The commission agrees that changes to final contours should not represent a significant change in the facility's ability to protect human health and the environment, and should not require a major amendment but the commission does not agree that only minor configuration changes will result.

Revision of the final contours requires a demonstration that the run-on/run-off has been considered, and that the proposed contours have been accommodated to result in no off-site impact. This demonstration is of interest to the community and particularly surrounding landowners. The commission does not agree that public notice should be on a case-by-case basis or that public notice should not be required, or that the rule should imply a degree of allowable off-site impact, and has not amended the rule in response to these comments.

Revisions to final contours

B&M, TASWA, NTMWD, COA, COCC, COD, SOSA, and WMTX commented that §305.70(k)(8) should provide clarification on applicability of the term "new leachate collection system." LF/TCE stated that authorization for the installation of a new leachate collection system should be processed as a major amendment. TASWA, NTMWD, COA, COCC, COD, SOSA, and RWS commented that the activity does not represent a significant change in the facility's ability to protect human health and the environment. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the rule should allow the executive director to make a case-by-case determination on the need for public notice or that public notice should not be required.

The commission agrees that §305.70(k)(8) requires clarification and has amended the rule to identify applicability to a leachate collection system not authorized in the existing permit. The commission acknowledges it should not represent a significant change in the facility's ability to protect human health and the environment, therefore the commission does not agree that a major amendment is appropriate and has not amended the rule in response to this comment. However, the commission also does not agree that installation of a new leachate collection system is of the same magnitude as allowable changes in §305.70(j), or that the rule should allow executive discretion for public notice and has not amended the rule in response to these comments.

Post-closure land use

LF/TCE stated that authorization for changes in the post-closure use of a landfill during the post-closure care period as identified in §305.70(k)(9), should be processed as a major amendment.

The regulations referenced in §305.70(k)(9) relate to construction over a closed landfill which requires a development permit. In addition to the public notice required for the permit modification under §305.70(k) and the ability to file a motion to overturn the executive director's decision, the development permit process includes an opportunity for a public meeting. The commission does not agree that in addition to these opportunities for public input, it is appropriate to require processing as a major amendment and has not amended the rule in response to this comment.

Changes in sequence of development

B&M and TxSWANA commented that public notice for all sequence changes is unnecessary and that the executive director should make a case-by-case determination on the need for public notice for this activity. IESI commented that the rule should not require public notice if there are not negative effects to the community. LF/TCE stated that authorization for this activity should be processed as a major amendment. TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the rule should not require public notice or should allow for the executive director discretion.

The commission does not agree that a change in the sequence of landfill development should require a major amendment and has not amended the rule in response to this comment. Landfill cell development is a previously established part of the permit and changes processed under this section will not authorize any new waste disposal areas. Sequence changes relate to the timing in which waste placement begins in an area of the site, and the commission agrees that there are instances when a sequence change will have no impact on the community. If upon completion of executive director review it has been determined that no impact to the public will occur, the

commission agrees that the activity could be excluded from the requirement for public notice. The commission has amended the rule in response to these comments to allow the executive director to make a case-by-case determination on the need for public notice. Accordingly, the commission has moved the activities proposed under §305.70(k)(10) to the list of modifications which do not require public notice in §305.70(j) with a provision that public notice will be required if the sequence change would potentially affect the community.

Transfers and name changes

Allied commented that §305.70(k)(11) should be amended to remove public notice requirements for name changes or transfers. IESI and WMTX commented that a requirement for public notice for a name change should be removed to provide consistency with §305.64. IESI commented that the rule should be amended to revise instructions for mailing notice. LF/TCE commented that name changes and permit transfers should either allow a comment period prior to being authorized or should be processed as a major amendment.

The commission is not requiring a transfer for corporate name changes and therefore does not agree that requiring a permit modification with public notice for a name change is inconsistent with the procedures in §305.64. Corporate name changes may be the result of an acquisition and will likely require that the facility's financial assurance be provided under a new name. The financial responsibility for an MSW facility is of interest to the community in which it is located and the commission does not agree that the requirement for public notice should be removed. The rule provides for public notice after issuance, which is not overly-burdensome and which is consistent with the processing of permit transfers in the state's industrial and hazardous waste permit

program. Similarly, if documentation that complies with Chapters 305 and 330 is provided and corporate status is verified by the Secretary of State, the commission does not agree that delaying a transfer or name change for a comment period is appropriate, or that a permit major amendment is in any way proportionate to the activity. The commission has not amended the rule in response to these comments.

New "(k)" modifications

Allied commented the rule should be amended to allow the following changes as a permit modification when public notice is provided: changes to waste processing and storage facilities that may increase the size of certain features or change the odor control features but do not increase the authorized loading capacity of the unit; changes to the excavation plan or liner or final cover components with no increase in the landfill's maximum permitted elevation, depth or permitted capacity; changes in the final cover or liner systems that provide equivalent environmental protection; and the addition of a new waste stream if existing design and operational procedures are protective of the environment. B&M stated that authorization of alternate final cover systems should be identified in §305.70(k) and that alternate liner systems should not be subject to a contested casing hearing. IESI commented that the list of allowable modifications should include changes to an approved final cover design or to an approved alternative liner design if providing equivalent or enhanced performance. MPI, TASWA, NTMWD, COA, COCC, COD, and SOSA commented that the one-time 10-foot height increase allows a needed flexibility and should not be deleted from the rule.

The commission does not agree that "changes to waste processing and storage facilities that may increase the size of certain features..." adequately defines the type changes that could be made

under this provision and would make the rule subject to interpretation and has not revised the rule in response to this comment. The commission has identified alternative liner designs and the addition of a new waste stream as changes eligible for a major amendment by limited application, therefore the commission does not agree these changes should be processed under §305.70(k). The commission does not agree that a 10-foot height increase should be processed as other than a major permit amendment due to the resulting increase in the height and life of the landfill and has not revised §305.70(k) in response to these comments. The commission agrees that changes to the excavation plan with no increase in the landfill's maximum permitted elevation, depth or permitted capacity and which do not alter the effectiveness of the groundwater monitoring system, and authorization of alternative final cover systems should be allowable activities under this category, and in response to comment has created new modifications under §305.70(k).

Modifications processed under §305.70(l)

Allied commented that the preamble to the rule should include a discussion on the intent of §305.70 and its use in processing minor permit changes. B&M and TxSWANA commented that minor changes may be interpreted as requiring a limited major amendment application if the activity is not identified in one of the lists of modifications, and together with Allied and NSWMA stated that processing under §305.70(l) should continue.

The commission agrees that a brief discussion on the continued use of §305.70(l) to process changes not specifically identified in §305.70(j) or (k) should be provided. The commission acknowledges that the rule can not attempt to identify all possible changes to a permit or registration that are eligible for processing as modification under §305.70. Proposed changes will continue to be

evaluated for compliance with the criteria in §305.70(d) and (e), similarity in scope and impact to changes allowable in §305.70(j) and (k), and compliance with provisions in §305.62. Changes that meet all criteria for a permit or registration modification but which are not specifically identified in §305.70(j) or (k) will be approved under §305.70(l), with or without a requirement for public notice as appropriate.

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§305.43

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The adopted amendment implements THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The adopted amendment also implements Texas Water Code, §5.103, Rules.

§305.43. Who Applies.

(a) It is the duty of the owner of a facility to submit an application for a permit or a post-closure order. However, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit or a post-closure order, and for all Texas Pollutant Discharge Elimination System permits, it is the duty of the operator and the owner to submit an application for a permit.

(b) For industrial solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit or a post-closure order, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit or a post-closure order.

(c) For municipal solid waste applications, it is the duty of the owner of a facility to submit an application for a permit, amendment, or modification. However, if a facility is owned by one person and operated by another, the owner may authorize, in writing, the operator to submit applications for a permit, amendment, or modification. For a new facility, the operator may submit an application for a permit with the written consent of the owner(s) of the land upon which the facility is to be located.

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

§305.62, §305.70

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.024, which provides the commission with rulemaking authority; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The adopted amendments implement THSC, §361.002, Policy and Findings; THSC, §361.011, Commission's Jurisdiction, Municipal Solid Waste; THSC, §361.024, Rules and Standards and THSC, §361.061, Permits. The adopted amendments also implement Texas Water Code, §5.103, Rules.

§305.62. Amendment.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this

title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit. In case of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), a major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes from other states not authorized in the existing license;

(C) authorizes a change in the operator of the facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency; or

(F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefore and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

(i) This subsection applies only to major amendments to municipal solid waste (MSW) permits.

(1) A full permit application shall be submitted when applying for a major amendment to an MSW permit for the following changes:

(A) an increase in the maximum permitted elevation of a landfill;

(B) a lateral expansion of an MSW facility other than changes to expand the buffer zone as defined in §330.3 of this title (relating to Definitions). Changes to the facility legal description to increase the buffer zone may be processed as a permit modification requiring public notice under §305.70(k) of this title;

(C) any increase in the volumetric waste capacity at a landfill or the daily maximum limit of waste acceptance for a Type V processing facility; and

(D) upgrading of a permitted landfill facility to meet the requirements of 40 Code of Federal Regulations Part 258, including facilities which previously have submitted an application to upgrade.

(2) For all other major amendment applications for MSW facilities, only the portions of the permit and attachments to which changes are being proposed are required to be submitted. The executive director's review and any hearing or proceeding on a major amendment subject to this paragraph shall be limited to the proposed changes, including information requested under paragraph (3) of this subsection. Examples of changes for which less than a full application may be submitted for a major amendment include:

(A) addition of an authorization to accept a new waste stream (e.g., Class 1 industrial waste);

(B) changes in waste acceptance and operating hours outside the hours identified in §330.135 of this title (relating to Facility Operating Hours), or authorization to accept waste or operate on a day not previously authorized; and

(C) addition of an alternative liner design, in accordance with §330.335 of this title (relating to Alternative Liner Design).

(3) The executive director may request any additional information deemed necessary for the review and processing of the application.

(j) This subsection applies only to temporary authorizations made to existing MSW permits or registrations.

(1) Examples of temporary authorizations include:

(A) the use of an alternate daily cover material on a trial basis to properly evaluate cover effectiveness for odor and vector control;

(B) temporary changes in operating hours to accommodate special community events, or prevent disruption of waste services due to holidays;

(C) temporary changes necessary to address disaster situations; and

(D) temporary changes necessary to prevent the disruption of solid waste management activities.

(2) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be conducted, an explanation of why the authorization is necessary, and how long the authorization is needed.

(3) The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days, if circumstances warrant the extension.

(4) The executive director may provide verbal authorization for activities related to disasters as described in paragraph (1)(C) of this subsection. When verbal authorization is provided, the permittee or registrant shall document both the details of the temporary changes and the verbal approval, and provide the documentation to the executive director within three days of the request.

(5) Temporary authorizations for municipal solid waste facilities may include actions that would be considered to be either a major or minor change to a permit or registration. Temporary authorizations apply to changes to an MSW facility or its operation that do not reduce the capability of the facility to protect human health and the environment.

§305.70. Municipal Solid Waste Permit and Registration Modifications.

(a) This section applies only to modifications to municipal solid waste (MSW) permits and registrations related to regulated MSW activities. Modifications to industrial and hazardous solid waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Changes to conditions in an MSW permit or registration which were specifically ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section. Applications filed before the effective date of this section will be subject to the section as it existed at the time the application was received.

(b) References to the term "permit" in this section include the permit document and all of the attachments thereto as further defined in Chapter 330, Subchapter B, of this title (relating to Permit and Registration Application Procedures). References to the term "registration" in this section include the registration document and all of the attachments thereto as further defined in Chapter 330, Subchapter B of this title.

(c) Any increase in the permitted or registered daily maximum limit of waste acceptance for a Type V processing facility shall be subject either to the requirements of §305.62(c)(1) of this title (relating to Amendment) in the case of a permitted facility, or to the requirements of a new registration in the case of a registered facility. Changes in the annual waste acceptance rate at landfill facilities are subject to the requirements of §330.125(h) of this title (relating to Recordkeeping Requirements).

(d) Permit and registration modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment.

(e) A permittee or registrant may implement a modification to an MSW permit or registration provided that the permittee or registrant has received prior written authorization for the modification from the executive director. In order to receive prior written authorization, the permittee or registrant must submit a modification application to the executive director which includes, at a minimum, the following information:

(1) a description of the proposed change;

(2) an explanation detailing why the change is necessary;

(3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of a permit or a registration (i.e., a site development plan, site operating plan, engineering report, or any other approved plan attached to a permit or a registration document). These revisions shall be marked and

include revision dates and notes as necessary in accordance with §330.57(g) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities);

(4) a reference to the specific provision under which the modification application is being made; and

(5) for those modifications submitted in accordance with subsection (l) of this section that the executive director determines that notice is required and for those listed in subsection (k) of this section, an updated landowners map and an updated landowners list as required under §330.59(c)(3) of this title (relating to Contents of Part I of the Application).

(f) The permittee or registrant must submit one original, two unmarked copies, and one marked (e.g. redline/strikeout) copy of the modification application in accordance with §305.44 of this title (relating to Signatories to Applications). The applicant shall provide one of the two unmarked copies to the appropriate commission regional office. Failure to submit the modification application with complete information may result in the application being returned to the permittee or registrant without further action. Engineering documents must be signed and sealed by the responsible licensed professional engineer as required by §330.57(f) of this title.

(g) The following shall guide the processing of applications for modification of permits and registrations:

(1) For an application for a modification that does not require notice, if at the end of 60 calendar days after receipt of the permit or registration modification application the executive director has not taken one of the following five steps, the application shall be automatically approved:

(A) approve the application, with or without changes, and modify the permit or registration accordingly;

(B) deny the application;

(C) provide a notice-of-deficiency letter requiring additional or clarified information regarding the proposed change;

(D) determine that the application does not qualify as a registration modification, and that the requested change requires a new application for registration; or

(E) determine that the application does not qualify as a permit modification and that the requested change requires an amendment to the permit in accordance with §305.62(c) of this title.

(2) For an application for a modification that requires notice, technical review shall be completed within 60 calendar days of receipt of the permit or registration modification application, unless the review period is extended by the executive director in writing if needed to resolve an outstanding notice of deficiency. Upon completion of the public comment period, the executive director may do one of the following.

(A) If no timely comments are received, the executive director may grant the application on the 28th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk. The application is automatically approved if not acted on by the 28th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk.

(B) If timely comments are received, the executive director may take one of the steps listed in paragraph (1) of this subsection on or before the 45th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk. The application is automatically approved if not acted on by the 45th calendar day (unless extended by the executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk.

(h) If an application for a permit or registration modification is denied by the executive director, the permittee or registrant must comply with the original permit or registration conditions.

(i) If a permit or registration modification is listed in subsection (k) of this section or if a permit or registration modification application is made under subsection (l) of this section and the executive director determines that notice is required, the permittee or registrant must prepare and provide Notice of Application and Preliminary Decision after technical review is complete in accordance with §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration). If

notice is required, the applicant must file a landowner's list current on the day of filing under subsection (e)(5) of this section and §39.413(1) of this title (relating to Mailed Notice). The notice shall state that a person may provide the commission with written comments on the application within 23 days after the date the applicant mails notice and shall provide the Web site address where the application has been placed in accordance with §330.57(i) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). Before acting on an application, the executive director shall review and consider any timely written comments. The executive director is not required to file a response to comments. Prior to approval of a modification application, the permittee or registrant must file certification, on a form prescribed by the executive director, that notice was provided as required by §39.106 of this title. The chief clerk shall mail notice of issuance of a modification in accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update). Section 50.133(b) of this title does not apply to modifications which do not require notice under subsection (j) or (l) of this section.

(j) Paragraphs (1) - (32) of this subsection are allowable permit and registration modifications that do not require notice if they meet the criteria in subsection (d) of this section (i.e., they must apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment):

(1) the establishment of a cell or area that will accept brush and construction demolition waste and rubbish only (also known as a Type IV area) if the cell or area is located within the disposal footprint specified in the site development plan or municipal solid waste landfill (MSWLF) permit;

(2) changes in excavation details for landfills, except for changes that would:

(A) increase the depth or lateral extent of the disposal footprint as described in the site development plan or permit; or

(B) increase the disposal capacity of the landfill facility;

(3) changes to the landfill marker systems (e.g., from a grid based upon geographic coordinates to a grid based upon survey coordinates);

(4) an increase in sampling frequency (e.g., for groundwater and landfill gas monitoring systems);

(5) submittal of a new Soils and Liner Quality Control Plan (SLQCP) or changes to an existing SLQCP;

(6) changes to existing landfill underdrain or dewatering systems that maintain or improve effectiveness;

(7) changes to the site layout plan that add or delete a registered or exempted MSW facility/activity (e.g., a used or scrap tire collection area, a compost operation, a recycling collection area, a liquid waste processing facility, a registered transfer station, a citizens' collection station, a beneficial landfill gas recovery plant, a brush collection/chipping/mulching area, etc.);

(8) changes in the site layout, other than entry gate location, that relocate the gatehouse, office or maintenance building locations, or that add scales to the facility;

(9) changes in the design details for an authorized solidification basin;

(10) changes in the drainage control plan that alter internal storm water run-on/run-off control without impacting offsite drainage or increasing landfill disposal capacity;

(11) the addition of design and operational requirements in accordance with §330.173 of this title (relating to the Disposal of Industrial Wastes) for the opening of a dedicated cell or area that will accept Class 1 nonhazardous industrial waste, provided that the landfill permit authorizes the acceptance of that waste and that the dedicated cell or area is located within the disposal footprint specified in the site development plan or MSWLF permit;

(12) changes in the sequence of landfill development unless the changes would potentially affect the adjacent property owners or the community in which case notice in accordance with §39.106 of this title would be required;

(13) changes in the perimeter access control system that do not reduce system effectiveness in controlling access to the site;

(14) corrections in the metes and bounds description of the permit or registration boundary that reduce the size of the facility and that do not result in permit or registration acreage beyond the original permit or registration boundary;

(15) a change in the facility records storage area from an onsite to an offsite location;

(16) the addition of a composting refund plan (a plan containing instructions and procedures to ensure collection of the composting refund, as cited in Texas Health and Safety Code, §361.0135) to the site operating plan of an MSWLF;

(17) changes to the Site Development Plan or Site Operating Plan to provide performance-based standards for personnel or equipment, or minor corrections to provide consistency within the permit;

(18) installation of a new monitoring well(s) that replace(s) an existing monitoring well(s) (e.g., landfill gas or groundwater monitoring well(s)) that has been damaged or rendered inoperable, with no change to the design or depth of the well(s), or to the monitoring system design;

(19) changes to an existing leachate collection system design;

(20) installation of a new landfill gas monitoring system not required by permit;

(21) changes to an existing landfill gas monitoring system design that maintain or improve the monitoring system design;

(22) changes to an existing landfill gas collection system design. Changes made for the purpose of complying with other permits, rules, or regulations do not require prior approval under this section before implementation. Notification of changes made to a landfill gas collection system in order to comply with other permits, rules, or regulations shall be sent within 30 days to the executive director and the appropriate commission regional office. Upon receipt of the notification the executive director will determine if submittal of a modification is required;

(23) submittal of a new Groundwater Sampling and Analysis Plan (GWSAP) or changes to an existing GWSAP;

(24) submittal of a new waste acceptance plan or the addition of detailed narrative or design drawings which provide details for the acceptance of waste streams authorized within the permit or registration (e.g., Class 1 nonhazardous industrial waste);

(25) revisions to an existing waste acceptance plan to include waste streams authorized by the permit or registration;

(26) upgrade of an existing landfill groundwater monitoring system with no increase in depth or design, or the installation of monitor wells at a different depth or design in addition to wells in the approved groundwater monitoring system. Changes to the groundwater monitoring system resulting

from a change in the groundwater characterization as defined in Chapter 330, Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action), must be requested as an amendment under §305.62 of this title;

(27) the plugging of monitoring wells (e.g., landfill gas or groundwater monitoring wells) when the executive director has determined that the plugging of monitoring wells is appropriate in various situations including, but not limited to, when a facility has completed the post-closure maintenance period, when an obsolete monitoring system is being replaced with a new monitoring system, or when a damaged monitoring well is being replaced;

(28) changes to closure or post-closure care plans for technical corrections, updated testing procedures, etc.;

(29) substitution of an equivalent financial assurance mechanism;

(30) changes to a closure or post-closure care cost estimate required under §§330.503, 330.505, or 330.507 of this title (relating to Closure Cost Estimates for Landfills; Closure Cost Estimates For Storage and Processing Units; and Post-Closure Care Cost Estimates for Landfills) that result in an increase/decrease in the amount of financial assurance required if the increase/decrease in the cost estimate is due to an increase/decrease in the maximum area requiring closure;

(31) changes in the amount of financial assurance required as the result of corrective action;

(32) changes to the entry gate location that do not alter access traffic patterns delineated in the permit or registration;

(k) Paragraphs (1) - (13) of this subsection are modifications which require notice. For those modifications requiring notice, the permittee or registrant must send notice of the modification application by first-class mail in accordance with §39.106 of this title and to all persons listed in §39.413 of this title:

(1) the use of an alternate daily cover material on a permanent basis in accordance with §330.165(d) of this title (relating to Landfill Cover);

(2) a modification in the operation of a landfill that will change the incoming waste stream to a more restrictive waste stream (i.e., a change from a Type I landfill operation to a Type IV landfill operation). The modification may be granted if the receipt of waste under the present operation ceases once the modification is approved; the filled portion of the landfill will be closed in accordance with Chapter 330, Subchapter K of this title (relating to Closure and Post-Closure); and the modification application details changes to the site development plan and site operating plan as appropriate to reflect the proposed change in operation;

(3) installation of a landfill gas collection system for a landfill gas remediation plan in accordance with §330.371 of this title (relating to Landfill Gas Management);

(4) changes to groundwater monitor well depth or design that are consistent with the groundwater characterization and approved monitoring system design, and that improve the effectiveness of the system in detecting contamination. Changes to the groundwater monitoring system resulting from a change in the groundwater characterization, must be requested as an amendment under §305.62 of this title;

(5) changes to decrease sampling frequency (e.g., for groundwater and landfill gas monitoring systems);

(6) changes to a site layout plan that relocate a liquid waste solidification facility or a petroleum-contaminated soil stabilization area;

(7) changes to the facility legal description due to the addition of property for purposes of increasing the buffer zone as defined in §330.3 of this title;

(8) changes to the excavation plan with no increase in the landfill's maximum permitted elevation, depth or permitted capacity and which do not alter the effectiveness of the groundwater monitoring system;

(9) changes to the approved final contours and approved final slopes with no height or capacity increase over the maximum permitted height or capacity, with no impact to off-site drainage;

(10) changes to include an alternative final cover design in accordance with §330.457(d) of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or After October 9, 1993);

(11) installation of a new leachate collection system not authorized in the existing permit;

(12) changes to post-closure use of a landfill in accordance with §330.957 of this title (relating to Contents of the Development Permit and Workplan Application) during the post-closure care period;

(13) name changes or transfers of municipal solid waste permits or registrations in accordance with §305.64 of this title (relating to Transfer of Permits) must be processed as permit or registration modification and require public notice after issuance. The mailing procedures of §305.70(k) of this title shall be followed. Mailing procedures shall be completed after the transfer is approved and within 20 days following the approval.

(l) In case of an application for a permit or registration modification for a change not listed in subsection (j) or (k) of this section, the executive director shall make a determination as to whether the change is eligible to be processed as a permit or registration modification and if the change requires public notice in accordance with subsection (i) of this section. In making this determination, the executive director shall consider if the requested change meets the criteria in subsections (d) and (e) of

this section. Public notice shall be reserved for modification applications of similar impact as modifications listed in subsection (k) of this section.

(m) The applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn the executive director's action on a modification application in accordance with §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).