

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§305.43, 305.62 and 305.70.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking would provide 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. Currently, the established practice for making a substantive change to a permitted MSW facility requires that the permittee file a major amendment application under §305.62 that addresses all aspects of facility design and operation. The time and effort to process an amendment application is almost identical to that of a new permit application. Some changes to a permit may have a substantial effect on operations, but enactment of the change would require relatively few revisions to the permit document. The current permit amendment process is costly and time consuming to all involved. To remedy this inequity yet retain an opportunity for contested case hearing, these proposed rules would 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 would apply to most changes that currently meet the definition of a major amendment for an MSW facility.

This rulemaking also proposes 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; and 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. The commission seeks comment on the types of actions which will or will not require public notice as identified under §305.70(j) and (k).

Concurrent with this rulemaking, the commission proposes amendments to 30 TAC Chapter 330, Municipal Solid Waste, to revise notice requirements for new permits and major amendments.

SECTION BY SECTION DISCUSSION

Section 305.43, Who Applies

The commission proposes to amend §305.43(a) to make a grammatical change.

As part of the proposed rulemaking, the commission is seeking comment on the use of the terms “owner of a facility” and “operator” as used in §305.43(b), Who Applies. The commission also seeks comment on the duties of the facility owner and facility operator in the preparation and submittal of an application.

Section 305.62, Amendment

The commission proposes to amend §305.62 to correct a 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 proposes to amend §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. The rule would allow 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 major amendment would be limited to only the requested amendment and the related permit documents and attachments.

The commission proposes to move criteria related to temporary authorizations in §305.70(m) to proposed §305.62(j) and clarify an existing practice that temporary authorizations for municipal solid waste 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 not moved from existing §305.70(m)(1) because it was redundant and unnecessarily limiting.

Section 305.70, Municipal Solid Waste Permit and Registration Modifications

The commission proposes to amend §305.70, (a) - (c), (e), (f), (j), (k), and (m). Subsection (n) has been relettered to §305.70(m). The proposed changes are discussed in the following paragraphs.

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

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

The commission proposes to amend §305.70(c) to remove a reference to the waste capacity increase in §305.70(k) which is deleted in this proposed rulemaking, and would clarify 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. A reference to the applicable provisions in Chapter 330 for addressing increases in the waste acceptance rate at landfill facilities has been added. 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 proposes to amend §305.70(e)(3) and (5) to reflect revised Chapter 330 rule citations resulting from a rulemaking effective March 27, 2006.

The commission proposes to amend §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 proposes to amend §305.70(j)(1), (4), (6), (7), (9), (10) - (13), (16)-(22), (28), (30), and (32). Section 305.70(j)(1) - (33) is renumbered as §305.70(j)(1) - (27).

The commission proposes to amend §305.70(j)(1) to refer to “cell” rather than “trench” to reflect current industry terminology regarding waste containment structures.

The commission proposes to amend §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 proposed as §305.70(k)(4).

The commission proposes to delete existing §305.70(j)(6) and move the language to proposed §305.70(k)(6), which will require public notice for changes to closure or post closure plans.

The commission proposes to renumber §305.70(j)(7) to proposed §305.70(j)(6) and amend the existing language to remove examples of facilities or activities that may be added or deleted through a permit or registration modification without public notice. Requests to add or delete these facilities or activities have not been received by the commission and the language is removed only for purposes of brevity.

The commission proposes to renumber §305.70(j)(8) to proposed §305.70(j)(7).

The commission proposes to renumber §305.70(j)(9) to proposed §305.70(j)(8) and amend existing language to clarify applicability only to a solidification basin which was previously authorized.

The commission proposes to delete existing §305.70(j)(10), which relates to changes to a permit or registration regarding minimum performance based requirements for personnel or equipment. Due to the

specificity of the existing modification language, the subsection has been rarely used or has been cited incorrectly. Future applicable requests to provide performance standards for personnel or equipment would be processed under §305.70(l) without public notice.

The commission proposes to renumber §305.70(j)(11) to proposed §305.70(j)(9) and amend existing language to remove the ambiguity associated with the term “significantly” and to delete applicability to changes in final contours, which are the subject of proposed §305.70(k)(7).

The commission proposes to renumber §305.70(j)(12) to proposed §305.70(j)(10) and reflect revised Chapter 330 rule citations, resulting from a rulemaking effective March 27, 2006.

The commission proposes to delete existing §305.70(j)(13) and move the provision for changes to final contours and slopes to proposed §305.70(k)(7), which will require public notice.

The commission proposes to renumber §305.70(j)(14) as proposed §305.70(j)(11).

The commission proposes to renumber §305.70(j)(15) as proposed §305.70(j)(12).

The commission proposes to renumber §305.70(j)(16) as proposed §305.70(j)(13) and amend the existing language to more accurately reflect the purpose of the compost refund plan.

The commission proposes to renumber §305.70(j)(17) as proposed §305.70(j)(14) and amend the existing

language regarding the installation of replacement monitoring wells.

The commission proposes to renumber §305.70(j)(18) as proposed §305.70(j)(15) and amend the existing language to remove applicability to the installation of a new leachate collection system. This activity would require public notice and be processed under proposed §305.70(k)(8).

The commission proposes to renumber §305.70(j)(19) as proposed §305.70(j)(16) and amend the existing language 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 proposes to renumber §305.70(j)(20) as proposed §305.70(j)(17) and amend the existing language to clarify applicability only when changes in landfill gas monitoring system design result in equal or improved performance.

The commission proposes to renumber §305.70(j)(21) as proposed §305.70(j)(18) and amend the existing language to allow activities necessary to maintain compliance with standards in regulation (e.g. air performance standards), in addition to other permit requirements. Language allowing executive director determination of the need for modification of the MSW Permit has been added.

The commission proposes to delete §305.70(j)(22) relating to liner special conditions and design constraints because it has rarely been used. Any future changes subject to the existing subsection would be processed under §305.70(l) without public notice.

The commission proposes to renumber §305.70(j)(23) as proposed §305.70(j)(19).

The commission proposes to renumber §305.70(j)(24) as proposed §305.70(j)(20).

The commission proposes to renumber §305.70(j)(25) as proposed §305.70(j)(21).

The commission proposes to renumber §305.70(j)(26) as proposed §305.70(j)(22), and reflect the applicable Chapter 330 subchapter, resulting from a rulemaking effective March 27, 2006.

The commission proposes to renumber §305.70(j)(27) as proposed §305.70(j)(23).

The commission proposes to delete §305.70(j)(28) and move the language to proposed §305.70(k)(9) which requires public notice.

The commission proposes to renumber §305.70(j)(29) as proposed §305.70(j)(24).

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

The commission proposes to renumber §305.70(j)(31) as proposed §305.70(j)(26).

The commission proposes to delete §305.70(j)(32) and move the proposed language to proposed

§305.70(k)(10) which requires public notice.

The commission proposes to renumber §305.70(j)(33) as proposed §305.70(j)(27).

The commission proposes to amend §305.70(k)(1), (2), (4) - (6), and subsequent paragraphs are added.

Section 305.70(k)(1) - (6) is renumbered as §305.70(k)(1) - (11).

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

The commission proposes to delete §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 proposed §305.62(i).

The commission proposes to renumber §305.70(k)(3) as proposed §305.70(k)(2), and reflect the applicable Chapter 330 subchapter, resulting from a rulemaking effective March 27, 2006.

The commission proposes to delete §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 would require a major amendment and submittal of a full permit application as described in proposed §305.62(i).

The commission proposes to renumber §305.70(k)(5) as proposed §305.70(k)(3) and amend existing language to reflect the revised Chapter 330 rule citation and heading, resulting from a rulemaking effective March 27, 2006.

The commission proposes to add §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 proposes to renumber §305.70(k)(6) as proposed §305.70(k)(5) and amend existing language 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 would be processed as a major amendment in accordance with §305.62.

The commission proposes to add §305.70(k)(6) to specify that changes to closure or post closure care plans may be authorized through a modification with public notice.

The commission proposes to add §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 proposes to add §305.70(k)(8) to specify that installation of a new leachate collection

system may be authorized through a modification with public notice.

The commission proposes to add §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 proposes to add §305.70(k)(10) to specify that changes in the sequence of landfill development may be authorized through a modification with public notice.

The commission proposes to add §305.70(k)(11) to specify that name changes or transfers of municipal solid waste 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 appropriate the addition of the proposed subsection.

The commission proposes to delete §305.70(m) and move language related to MSW temporary authorizations to proposed §305.62(j).

The commission proposes to renumber §305.70(n) as proposed §305.70(m).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, fiscal implications, although not expected to be significant, are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency

anticipates that there will be an increased number of public notices and major amendment applications.

This will increase postage costs for the agency and require additional staff time to process more applications. The agency plans to use existing resources to absorb the potential increase in workload and postage costs. Local governments that own or operate MSW facilities are expected to experience an increase in preparation and postage costs associated with public notice requirements, but there should be a decrease in costs associated with preparing some major amendment applications.

The proposed rulemaking would amend sections of Chapter 305 along with amending sections of Chapter 330. Proposed amendments to Chapter 305 would address permit application and public notice requirements, and proposed changes to Chapter 330 would address additional signage requirements and expand the area to which public notices must be mailed. This fiscal note addresses matters pertaining to Chapter 305.

One of the proposed amendments to Chapter 305 would provide that full permit applications for an MSW facility are needed only when there is a request for a major amendment to: increase the elevation of a landfill, expand the lateral area of a facility, increase the waste capacity of a facility, and upgrade a landfill facility to meet requirements of 40 CFR Part 258. For other types of requested major amendments, such as an alternate liner design or the acceptance of a new waste stream, an MSW facility will be allowed to limit the permit application to the changes requested instead of opening the entire permit for review, comment, and possible contested case hearing. This proposed rulemaking will reduce the time, effort, and expense of preparing and reviewing some major amendment applications that, under some circumstances, may have little or no impact on the surrounding community while still allowing for contested case hearings on the

proposed change.

Staff estimates that as many as seven local governments submit applications for new permits and major amendments each year. It is not known at this time how many local governments would submit applications that qualify for the proposed rules' limited application. However, costs for preparing full permit applications vary widely across the state and could range from \$50,000 to \$500,000 per application depending on the facility and its location. Costs for preparing the proposed limited permit application also would vary widely across the state and are estimated to range from \$5,000 to \$100,000 per application. The proposed rules could yield cost savings of \$45,000 to \$400,000 per application for these types of major permit amendments.

Other proposed amendments to Chapter 305 would: clarify that MSW Temporary Authorizations could apply to either major or minor changes to a permit or registration; specify that transferring an MSW permit or registration is an action that requires public notice; and specify that public notice will be required for some modifications not currently requiring such notice. More specifically, plans to decrease sampling frequency; changes to closure plans, post closure plans, or post closure use; changes to approved final contours and slopes; installation of a new leachate collection system; changes in the sequence of landfill development; changes in name; and transfers of permits or registrations will require public notice under the proposed rules and will increase the number of public notices that MSW facilities must publish. Based on the number of modifications received in the past, it is estimated that there may be as many as an additional 15 local governments that own or operate MSW facilities that will incur public notice costs each year under the proposed rules. The cost of preparing and mailing public notices previously not required vary

widely across the state, but staff estimates that costs for public notices under the proposed rules could range from \$1,000 to \$5,000 per notice. Annual statewide costs for local governments are expected to range from \$15,000 to \$75,000, and over the first 5 years the proposed rule is in effect, costs could range from \$75,000 to \$375,000.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a less expensive, more efficient permit process for some major amendment MSW applications, increased public awareness of MSW actions, and continued protection of public health and safety.

Fiscal implications are anticipated for businesses and individuals that own or operate MSW facilities.

Staff estimates that as many as seven businesses could submit new permit or major amendment applications per year. For certain types of major amendment applications, such as an alternate liner design or the acceptance of a new waste stream, an MSW facility will be allowed to limit the permit application under the proposed rules to the changes requested. Since such changes may have little or no impact on the surrounding community, the proposed rules allow for a less costly process in preparing these types of major amendment applications while still allowing for contested case hearings. At this time, staff cannot estimate how many of the seven estimated applications typically submitted will qualify for the proposed limited application. However, for those applications that would qualify for a limited application process, cost savings could be as much as \$45,000 to \$400,000 per application.

The proposed rules will also require increased public notice for certain landfill actions. Staff estimates that approximately 15 additional businesses owning or operating landfills will be required to comply with the proposed public notice rules each year. The cost of preparing and mailing public notices vary widely across the state, but staff estimates that costs for public notices under the proposed rules could range from \$1,000 to \$5,000 per notice. Annual statewide costs for businesses are expected to range from \$15,000 to \$75,000, and over the first five years the proposed rule is in effect, costs could range from \$75,000 to \$375,000.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications, although not anticipated to be significant, may be experienced by small or micro-businesses that are required to comply with the proposed public notice requirements. However, small or micro-businesses that would be allowed to submit limited applications under the proposed rules would experience the same cost savings as those experienced by local governments and large businesses. Cost savings for limited applications are estimated to range from \$45,000 to \$400,000 per application and cost increases for public notice could range from \$1,000 to \$5,000 per notice. Staff estimates that two small businesses per year may submit a limited application for a permit under the proposed rules. Staff estimates that six small businesses may be impacted by the expanded public notice requirements.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The purpose of the proposed rules is to provide increased information to the public, streamline preparation and review of major amendments, and continue to protect public health and safety regarding MSW facilities. Therefore, there are no alternative methods of achieving the purpose of the rulemaking.

Adverse fiscal impacts on small businesses will only be triggered if increased public notice is required, and those impacts are not anticipated to be significant. A small business could benefit significantly from cost savings in the proposed rules regarding limited applications.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225, because it does not meet the 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 proposed 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

affected by the proposed change. These proposed rules would 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 would apply to most changes that currently meet the definition of a major amendment for an MSW facility. In addition, this rulemaking proposes additional changes to clarify an existing practice, identify the administrative procedure for transfer of permit or registration ownership, and to provide enhanced public notice and participation for some permit actions. These proposed changes are: 1) to definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration; 2) to specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice; and 3) to 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. It is not anticipated that the proposed rulemaking 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 this proposed rulemaking does not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does 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 proposed rulemaking does not meet any of these requirements. First, there are no applicable federal standards for MSW permits or registrations. Second, the proposed rulemaking does 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 proposed rulemaking. Fourth, the commission proposes this rulemaking under the specific authority of Texas Health and Safety Code, §361.061 and §361.079. This rulemaking is 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 propose this rulemaking solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed 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 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 proposed rulemaking 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 proposes: 1) to definitively state that an MSW Temporary Authorization may apply to either major or minor changes to a permit or registration; 2) to specify that the means of transferring an MSW permit or registration is a permit or registration modification with public notice; and 3) to 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.

Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property because the rulemaking does not affect real property.

There are no burdens imposed on private real property. In addition, the proposed rulemaking does 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, this proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal 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 will, therefore, require 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.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on January 8, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Duron, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-001-305-PR. The comment period closes January 15, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Jeff Davis, MSW Permits Section at (512) 239-6228.

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§305.43

STATUTORY AUTHORITY

The amendment is proposed 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 commissions 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 proposed 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 proposed amendment also implement 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[; 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 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.

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

§305.62, §305.70

STATUTORY AUTHORITY

The amendments are proposed 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 commissions 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 proposed 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 proposed 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 [Municipal Solid Waste Class I 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 therefor 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) The owner or operator shall submit a full permit application 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;

(C) any increase in waste capacity; 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, the owner or operator may submit only the portions of the permit and attachments to which changes are being proposed. The executive director's review and any hearing or proceeding on the major amendment shall be limited to the

proposed changes.

(3) The executive director may request any additional information deemed necessary for the 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. [The effective date of the repeal of existing §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) and replacement with this new §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) is June 3, 2002. Applications for modifications filed before this new section becomes effective, will be subject to the section as it existed prior to June 3, 2002.]

(b) References to the term “permit” in this section include the permit document and all of the attachments thereto as further defined in 30 TAC Chapter 330, Subchapter B, of this title (relating to Permit and Registration Application Procedures) [Subchapter E, §§330.50 - 330.64 of this title (relating to Permit 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 [E] of this title.

(c) Any [Except as provided in subsection (k) of this section, any] increase in the landfill capacity authorized for waste disposal or 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.

(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) [§330.51(e)(4) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.64(b) and (c) of this title (relating to Additional Standard Permit Conditions 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 (1) 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) [§330.52(b)(4)(D) and (b)(5) of this title (relating to Technical Requirements of Part I of the Application)].

(f) The permittee or registrant must submit one original, [and] 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) [§330.51(d)] 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 outstanding notice of deficiencies. Upon completion of the comment period, the executive director may do one of the following.

(A) If no 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 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 30 TAC §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 current landowner list under §305.70(e)(5) of this title 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. 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 30 TAC §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) - ~~(27)~~ [(33)] of this subsection are allowable permit and registration modifications 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 [trench] or area that will accept brush and construction demolition waste and rubbish only (also known as a Type IV area) if the cell [trench] 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 [changes] 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 in closure or post-closure care plans;]

(6) [(7)] changes to the site layout plan that add or delete a [properly] registered or exempted MSW facility/activity, [provided that the facility/activity either requires a registration or would be exempt were it located offsite] (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 area used for collection of non-putrescible recyclable materials either stockpiled or collected in

bins,] a citizens' collection station, a beneficial landfill gas recovery plant, a brush collection/chipping/mulching area, [stockpiles of non-putrescible recyclable materials,] etc.);

(7) [(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;

(8) [(9)] changes in the design details for an authorized a solidification basin;

[(10) changes to existing provisions in the site development plan, site operating plan, engineering report, the Part A application form of a permit or registration, or of any other approved plan regarding minimum equivalent performance-based requirements for operating personnel or operating equipment needs;]

(9) [(11)] changes in the drainage control plan that [significantly] alter internal stormwater run-on/run-off control without impacting offsite drainage or increasing landfill disposal capacity[.] [Changes may include revisions to topslopes and sideslopes of landfills which may cause adjustment to approved final contours];

(10) [(12)] the addition of design and operational requirements in accordance with §330.173 of this title (relating to the Disposal of Industrial Wastes) [§330.137 of this title (relating to the Disposal of Industrial Wastes)] for the opening of a dedicated trench 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 trench or area is located within the disposal footprint specified in the site development plan or MSWLF permit;

[(13) changes to the approved final contours and approved final slopes with no height or capacity increase over the maximum permitted height or capacity, due to sequence of development changes that reduce the waste disposal area;]

(11) [(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;

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

(13) [(16)] the addition of a composting refund [compost] 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;

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

(15) [(18)] changes to an existing leachate collection system design [or installation of a new leachate collection system];

(16) [(19)] installation of a new landfill gas monitoring system not required by permit;

(17) [(20)] changes to an existing landfill gas monitoring system design that maintain or improve the monitoring system design;

(18) [(21)] changes to an existing landfill gas collection system design, [, unless the] Changes [changes are] made for the purpose of complying with other permits, rules, or regulations [in which case the changes] 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 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;

[(22) changes to comply with the provisions of §330.203 of this title (relating to Special Conditions (Liner Design Constraints));]

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

(20) [(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);

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

(22) [(26)] upgrade of an existing landfill groundwater monitoring system so long as there is no increase in depth or design of wells or well system or change in groundwater characterization as defined in Chapter 330, Subchapter J [I] of this title (relating to Groundwater Monitoring and Corrective Action), in which case the changes would have to be requested as an amendment under §305.62 of this title;

(23) [(27)] the plugging of groundwater monitoring wells when the executive director has determined that the plugging of groundwater 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 groundwater monitoring system is being replaced with a new groundwater monitoring system, or when a damaged groundwater monitoring well is being replaced;

[(28)] changes to post-closure use of a landfill in accordance with §330.255 of this title (relating to Post-Closure Land Use) during the post-closure care period unless the changes would

potentially affect the adjacent property owners or community in which case notice in accordance with §39.106 of this title would be required;]

(24) [(29)] substitution of an equivalent financial assurance mechanism;

(25) [(30)] changes to a closure or post-closure care cost estimate required under §§330.503, 330.505, or 330.507 [§330.281 or §330.283] 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;

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

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

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

(k) Paragraphs (1) - ~~(11)~~ [(6)] 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) [~~§330.133(c)~~] of this title (relating to Landfill Cover);

[(2) an increase in the height of a landfill over the maximum permitted height of the landfill in accordance with the following criteria:]

[(A) Authorization to increase the height of a landfill may only be granted as a modification one time per facility. Subsequent applications for an increase in height require a major permit amendment in accordance with §305.62 of this title.]

[(B) A height increase shall be limited to ten feet at any one or several points above the originally permitted final contour elevations for the purpose of improving drainage.]

[(C) A revised final contour plan shall be prepared and submitted with the application. The plan must detail the revised final contours and include design calculations demonstrating that the proposed design provides the necessary runoff capability and controls, including erosion controls.]

[(D) The waste disposal area may not be expanded beyond the disposal footprint specified in the landfill permit.]

[(E) A height increase cannot result in a rate of waste disposal greater than noted in the landfill permit.]

[(F) A height increase can only be granted for one of the following situations:]

[(i) the entire facility will cease the receipt of solid waste within 365 days of the approval of the height increase (including the additional fill authorized by the height increase) and initiate formal closure of the entire facility; or]

[(ii) the height increase is requested solely for the purpose of improving the surface water drainage from the fill area;]

(2) [(3)] 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 [, II, or III] 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 [J] 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;

[(4) upgrade of a permitted landfill facility to meet the requirements of 40 Code of Federal Regulations Part 258 (relating to Criteria for Municipal Solid Waste Landfills). An upgrade may be approved as a modification until May 19, 2003 except as prohibited by Texas Health and Safety Code, §361.120;]

(3) [(5)] 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); [§330.56(n) of this title (relating to Attachments to the Site Development Plan); and]

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

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

(6) changes in closure or post-closure care plans;

(7) 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;

(8) installation of a new leachate collection system;

(9) 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;

(10) changes in the sequence of landfill development; and

(11) 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) 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. 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. The executive director may provide verbal authorization for activities related to natural disasters as described in paragraph (3) of this subsection. The permittee or registrant shall document the request and the verbal approval in a letter to the executive director within three days. Temporary authorizations must otherwise be in accordance with subsections (d) and (e)(1) and (2) 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; do not reduce the capability of the facility to protect human health and the environment; etc.). Examples of temporary authorizations include:]

[(1) the use of an alternate daily cover material on a trial basis not to exceed six months; however, one extension of up to six months may be granted to properly evaluate cover effectiveness for odor and vector control as a result of varying seasonal or climatic conditions;]

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

[(3) temporary changes necessary to address natural disaster situations; and]

[(4) temporary changes necessary to prevent the disruption of solid waste management activities.]

(m) [(n)] 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).