

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§305.42, 305.45, 305.50, 305.64 - 305.66, 305.69, 305.144, 305.150, 305.172, 305.175, 305.571, and 305.572; and proposes new §§305.650 - 305.661.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations periodically to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992,

June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000 and June 14, 2005 (Clusters III - X). A RCRA authorization rule package for parts of RCRA Rule Clusters XI - XV was submitted to EPA Region VI on July 25, 2007. Texas is currently waiting on authorization of these clusters. (A cluster is a grouping of federal RCRA amendments during a one-year period.)

The commission proposes in this rule package to adopt parts of RCRA Rule Clusters XIV, XV, XVI, XVII and XVIII that implement revisions to the federal hazardous waste program which were made by EPA between July 1, 2005 and June 30, 2008. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Adoption of two of the federal rule changes is mandatory in order to maintain RCRA authorization. EPA also recommends that the optional federal rule changes be incorporated into the state rules, but are not necessary in order to maintain authorization. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA. All proposed rule changes are discussed below in the SECTION BY SECTION DISCUSSION.

The Hazardous Waste Combustion Maximum Achievable Control Technology (MACT) regulations are multi-media at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this proposed rulemaking under air quality regulations at 30 TAC Chapter 113. The purpose of this proposed rulemaking is to propose adoption of other parts of the federal combustion MACT program in 40 CFR Parts 264 - 266 and 270. This proposed rulemaking would incorporate those aspects of the combustion MACT rules that affect hazardous waste management as part of the changes to 30 TAC Chapters 305 and 335.

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

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rulemaking to reflect the agency's current practices and to conform to Texas Register and agency guidelines. These changes include updating references to Texas State Agencies, updating cross-references, and correcting typographical, spelling, and grammatical errors.

§305.42, Application Required

The commission proposes amending §305.42 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 *Federal Register* (FR) 53420). This amendment would incorporate application requirements for a standard permit. Specifically, this amendment would incorporate the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on site in tanks, containers and containment buildings. To be eligible for a standard permit, facilities must manage hazardous waste on site in tanks, container storage areas or containment buildings. Standardizing this aspect of the permitting process will reduce the amount of agency technical review and processing time required by the traditional RCRA permit process. In addition, the standard permit will streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits. For a proposed facility, an applicant may submit a standard permit application in lieu of a Part B application for those units that qualify for a

standard permit. If additional hazardous waste units that do not qualify for a standard permit are to be permitted at the same facility, a Part B application must be submitted. A permittee may choose to apply for a standard permit in lieu of submitting a Part B permit renewal application for a tank, container storage area or containment building. If the current authorization also contains other hazardous waste management units not eligible for a standard permit, a Part B permit renewal application must be submitted for those units. A contested case hearing for a standard permit may be requested by the executive director, applicant or Office of the Public Interest Council. The term limit for a standard permit is ten years. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§305.45, Contents of Application for Permit

The commission proposes amending §305.45(a)(6) to update language to an existing requirement that specifies that documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer and/or Texas licensed professional geoscientist. This revised language would replace outdated language adopted from 40 CFR Part 264 previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer and/or Texas licensed professional geoscientist." This amendment is as stringent as the current state rules. This amendment is not required to maintain authorization.

§305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order

The commission proposes amending §305.50 to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment would incorporate final national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors. These standards implement Section 112(d) of the Clean Air Act by requiring hazardous waste combustors to meet hazardous air pollutants (HAP) emission standards reflecting the performance of the MACT. The proposed amendment allows the executive director to request additional information to assess the protectiveness of any facility subject to MACT EEE. This proposed amendment also allows the executive director to add additional requirements, including lowering emission limits, if in response to the information requested, it is necessary to protect human health and the environment. The proposed amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §305.50(a)(4)(F), (6), and (7) to update current language that would clarify the existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer. This revised language would replace outdated language adopted from 40 CFR previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer". The proposed amendment is as stringent as the current state rules. This amendment is not required to maintain authorization.

The commission also proposes amending §305.50 to conform to federal regulations promulgated in the July 14, 2006 issue of the *Federal Register* (71 FR 40254). This amendment would incorporate by reference corrections to typographical errors found in 40 CFR §§270.13 - 270.27. This amendment does not create new regulatory requirements. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§305.64, Transfer of Permits

The commission proposes amending §305.64 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). This amendment would incorporate application requirements for transfer of a standard permit. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§305.65, Renewal

The commission proposes amending §305.65 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). This amendment would incorporate application requirements for renewal of a standard permit. Specifically, this proposed amendment would provide when a permit is subject to renewal, the permittee may file a standard permit application instead of a renewal application for those units eligible for a standard permit. The permittee must file a renewal application for all remaining permitted units. The renewal of a standard permit will follow the same processes as a permit in §305.65. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to

the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§305.66, Permit Denial, Suspension, and Revocation

The commission proposes amending §305.66 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). This amendment would incorporate permit denial, suspension and revocation requirements for a standard permit. Specifically, this proposed amendment would add to the list for good cause to deny, suspend, or revoke a permit or order, if the executive director has received notification of intent to obtain a standard permit. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

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

The commission proposes amending §305.69(1)(10) to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment would incorporate Part B permit modification requirements that would allow facility owners or operators to request that specific RCRA operating and emissions limits be waived by submitting a Class 1 permit modification request for combustion facility changes. Specifically, the amendment would waive RCRA operating and emissions limits in the Part B permit if they are included in the MACT provisions of an air quality permit. The operating and emissions limits would be waived through modification of the Part B permit. The proposed amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§305.144, Certification and Inspection

The commission proposes amending §305.144 to update current language that would clarify the existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer. This revised language would replace outdated language adopted from 40 CFR previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer." The proposed amendment is as stringent as the current state rules. This amendment is not required to maintain authorization.

§305.150, Incorporation of References

The commission proposes amending §305.150 to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment would incorporate final NESHAP for hazardous waste combustors. These standards implement Section 112(d) of the Clean Air Act by requiring hazardous waste combustors to meet HAP emission standards reflecting the performance of the MACT. The proposed amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§305.172, Determining Feasibility of Compliance and Adequate Operating Conditions

The commission proposes amending §305.172 to conform to federal regulations promulgated in the June 14, 2005 issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005 issue of the *Federal Register* (70 FR 44150). This amendment would revise §305.172(2)(A)(iii) and (iv) to remove the requirement to use, "'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' EPA

Publication SW-846" and replace it with "appropriate analytical techniques" in the case of §305.172(2)(A)(iii) and "appropriate analytical methods" in the case of §305.172(2)(A)(iv). This amendment would eliminate the requirement that facility owners and operators use SW-846 methods but would not eliminate the requirement that facility owners and operators receive prior approval for specific analytical methods from the executive director through approval of a sampling and analysis plan. This amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

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

The commission proposes amending §305.175 to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment would add language that specifies information requirements for Part B of the application for a hazardous waste permit found in 40 CFR §270.19 for air emission controls for incinerators. Specifically this amendment would incorporate Part B permit requirements that would allow facility owners or operators of incinerators to request that specific RCRA operating and emissions limits be waived from the permit. The rule change would waive RCRA operating and emissions limits in the Part B permit if they are included in the MACT provisions of an air quality permit. The proposed amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§305.571, Applicability

The commission proposes amending §305.571(b) to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment would add language that specifies information requirements for Part B of the application for a hazardous waste permit found in 40

CFR §270.22 for air emission controls for cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, or hydrochloric acid production furnaces burning hazardous waste. Specifically this amendment would incorporate Part B permit requirements that would allow facility owners or operators of boilers and industrial furnaces to request specific RCRA operating and emissions limits be waived from the permit. The rule change would waive RCRA operating and emissions limits in the Part B permit if they are included in the MACT provisions of an air quality permit. The proposed amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§305.572, Permit and Trial Burn Requirements

The commission proposes amending §305.572(a) to conform to federal regulations promulgated in the June 14, 2005 issue of the *Federal Register* (70 FR 34538) as amended in the August 1, 2005 issue of the *Federal Register* (70 FR 44150). This amendment would allow those seeking permits or amendments to permits for boilers and industrial furnaces in which hazardous waste is burned to conduct trial burns using "appropriate analytical techniques" and "appropriate analytical methods" instead of SW-846 methods. This amendment provides more flexibility but is equivalent to the current rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §305.572(a)(6) to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment would adopt by reference revisions to the options found in 40 CFR §270.235(a) and (b) for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces to minimize air emissions from startup, shutdown and malfunction events. This proposed

amendment requires that incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces that become subject to RCRA permit requirements after October 12, 2005 control emissions of toxic compounds during startup, shutdown and malfunction events. The proposed amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§§305.650 - 305.661, Subchapter R: Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units

The commission proposes new sections §§305.650 - 305.661 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). These proposed new sections would incorporate application requirements for a standard permit. A RCRA standard permit will be available to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on site in tanks, containers and containment buildings. The standard permit will also be available to facilities which receive hazardous waste generated off site by a generator under the same ownership as the receiving facility, and which then store or non-thermally treat the hazardous waste in containers, tanks or containment buildings.

Standardizing this aspect of the permitting process will reduce the amount of agency technical review and processing time required by the traditional RCRA permit process. In addition, the standard permit will streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits. For a proposed facility, an applicant may submit a standard permit application in lieu of a Part B application for those units that qualify for a standard permit. If additional hazardous waste units that do not qualify for a standard permit are to be permitted at the same facility, a Part B application must be submitted. If a permittee chooses to

apply for a standard permit in lieu of submitting a Part B permit renewal application for a tank, container storage area or containment building, a standard permit application must be submitted. If the current authorization also contains other hazardous waste management units not eligible for a standard permit, a Part B permit renewal application must be submitted for those units. A contested case hearing for a standard permit may be requested by the executive director, applicant or Office of the Public Interest Council. The term limit for a standard permit is ten years. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

In addition to the changes discussed previously, the commission proposes to make nonsubstantive changes as needed to correct typographical errors, etc.

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, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. Local governments and businesses that are classified as large quantity generators of hazardous waste could experience cost savings under the proposed rules.

The proposed rules would update Chapter 305 to incorporate federal rule changes to the RCRA hazardous waste program that were adopted by EPA from July 2005 through June 2008. Some of the federal rules incorporated into these proposed rules afford regulated parties more options in complying with the RCRA

program. A corresponding rulemaking includes proposed amendments to 30 TAC Chapter 335, and fiscal impacts to Chapter 335 are detailed in a separate fiscal note.

The proposed rules incorporate optional methods of compliance and will remove the requirement to use specific EPA methods when conducting RCRA monitoring programs; correct administrative errors; defer MACT provisions from the RCRA permit to the Air Quality Title V permit; maintain risk-based requirements in the RCRA permit; clarify several NESHAP compliance and monitoring provisions; and allow for a standard permit for units that store or non-thermally treat hazardous waste.

Staff estimates that there may be as many as ten governmental entities that might choose to use the compliance options included in the proposed rules. This includes large airports and military bases which could save from \$20 to \$100 per sample if they can use less expensive, but equal or more protective monitoring methods. If a governmental facility that stores or non-thermally treats hazardous waste chooses to apply for a standard permit for those units, savings on permit applications could range from \$500 to \$20,000 per application. Fewer permit modifications may be required, which could save affected governmental entities \$500 to \$5,000 per modification.

PUBLIC BENEFITS AND COSTS

Nina 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 compatibility with federal regulations and continued protection of the environment through increased efficiency and innovation in sampling and analysis in detecting releases from waste management units; reduction in risk

from spills and emissions from transporting waste; and a reduction in paperwork if standard permits are utilized.

The RCRA hazardous waste program regulates generators of hazardous waste and facilities that treat, store, or dispose of those wastes. Typically, these are large businesses, and staff estimates that there may be as many as 6,000 generators of hazardous waste registered in Texas and as many as 200 permitted facilities that could be affected by the proposed rules. The proposed rules provide opportunities for cost savings. If less expensive but equally protective monitoring methods can be used, savings could range from \$20 to \$100 per sample. Facilities that store or non-thermally treat hazardous waste could apply for a standard permit, which could save from \$500 to \$20,000 in permitting costs and \$500 to \$5,000 in permit modification requests.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses are usually exempt from RCRA regulations because they generate very small volumes of hazardous waste. If a small business is classified as a large quantity generator of hazardous waste, it could experience the same cost savings as that of a large business if it chooses to utilize the options afforded by the proposed rules.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and

do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

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 rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because the regulated community benefits from the

greater flexibility, reduced recordkeeping, reporting, inspection and sampling requirements. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations.

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

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

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

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

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

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

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

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

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

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

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the

rulemaking is to protect, preserve, restore and enhance the diversity, quality, quantity, functions and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rule amendments will update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies.

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 June 16, 2009, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building B, Room 201A. 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 Devon Ryan, Office of Legal Services, at (512) 239-6090. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, 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 2008-024-335-PR. The comment period closes June 22, 2009. Copies of the proposed rule 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 Cynthia Palomares, Waste Permits Division, (512) 239-6079.

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§§305.42, 305.45, 305.50

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§305.42. Application Required.

(a) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, or who requests a post-closure order, or who is required to obtain a post-closure order shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and Texas Health and Safety Code (THSC), §361.082(e), shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date

of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations (CFR) §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under THSC, Chapter 361, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 *et seq.*, that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 CFR §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(c) An application for a new, amended, or renewed radioactive material license under Chapter 336 of this title (relating to Radioactive Substance Rules) shall consist of one signed original and five copies. The executive director may request additional copies. Copies of an application for a low-level radioactive waste disposal license under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be retained by the applicant for distribution in accordance with written instructions from the executive director.

(d) For applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or operator is subject to the requirements for updating the Part A application under 40 CFR §270.10(g), as amended and adopted in the CFR through June 29, 1995, as published in the *Federal Register* (60 FR 33911).

(e) Applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.

(f) For applications involving a standard permit, the procedures for application and issuance are found in Subchapter R of this chapter (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units).

§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. Each application for permit must include the following:

(1) the name, mailing address, and location of the facility for which the application is submitted;

(2) the ownership status as federal, state, private, public, or other entity;

(3) the applicant's name, mailing address, and telephone number;

(4) a brief description of the nature of the business;

(5) the activities conducted by the applicant which require a permit;

(6) a topographic map, ownership map, county highway map, or a map prepared by a Texas licensed professional engineer, Texas licensed professional geoscientist [registered professional engineer] or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth;

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(D) the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity; and

(E) such other information that reasonably may be requested by the executive director;

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management Program under the Texas Solid Waste Disposal Act;

(B) Underground Injection Control Program under the Texas Injection Well Act;

(C) National Pollutant Discharge Elimination System Program under the Clean Water Act and Waste Discharge Program under Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration Program under the Federal Clean Air Act (FCAA);

(E) Nonattainment Program under the FCAA;

(F) national emission standards for hazardous air pollutants preconstruction approval under the FCAA;

(G) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) dredge or fill permits under the FCAA;

(I) licenses under the Texas Radiation Control Act;

(J) subsurface area drip dispersal system permits under Texas Water Code, Chapter 32; and

(K) other environmental permits; and

(8) a supplementary technical report submitted in connection with an application. The report shall be prepared either by a Texas licensed professional engineer, a Texas licensed professional geoscientist, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report must include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and

(ii) the physical, chemical, and radiological properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radiological properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved; and

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order), §305.48 of this title (relating to Additional Contents for Applications for Wastewater Discharge Permits), §305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses), §336.207 of this title (relating to General Requirements for Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Application), and Chapter 330, Subchapter E of this title (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units [Permit Procedures]).

(b) Only one application needs to be filed for each geographical location in which waste is or will be disposed of or discharged from, even though there may be more than one outfall, place of deposit, or other place of disposal covered in the application.

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order.

(a) Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste must meet the following requirements.

(1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided must be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock,

provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act (TSWDA) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the TSWDA, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste is subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13 - 270.27 (as amended through July 14, 2006 (71 Federal Register 40254)), except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in

compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information submitted to satisfy this subparagraph shall meet the requirements of subparagraph (C) or (D) of this paragraph.

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph must include the applicable items listed under clauses (i) - (vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles;

(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year;

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:

(I) descriptions of the business and its operations;

(II) identification of any affiliated relationships;

(III) credit agreements and terms;

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities; and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i) - (v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative

and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under subparagraph (D) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit that includes a capacity expansion of an existing hazardous waste management facility must also contain information provided by a Texas licensed professional geoscientist or licensed professional engineer delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the EPA, that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14 - 270.27. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report prepared by a Texas licensed professional geoscientist or licensed professional engineer documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a Texas licensed professional engineer [registered professional engineer] who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application must also contain the following:

(A) copies of any relevant land use plans, adopted in accordance with the Texas Local Government Code, Chapter 211, which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within 1/2 mile of the facility in the case of an application for a permit for a new on-

site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this subsection.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles traveling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles traveling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways.

Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Commission on Environmental Quality, Texas Parks and Wildlife, General Land Office, Texas Department of State Health Services, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive

director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I) - (XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities in accordance with §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made

payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraph (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in 40 CFR §266.111) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) and (1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits).

(15) If the executive director concludes, based on one or more of the factors listed in subparagraph (A) of this paragraph that compliance with the standards of 40 CFR Part 63, Subpart EEE alone may not be protective of human health or the environment, the executive director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The executive director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required. The executive director shall base the evaluation of whether compliance with the standards of 40 CFR Part 63, Subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(A) particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day-care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(B) identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(C) identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(D) identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(E) presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(F) volume and types of wastes, for example wastes containing highly toxic constituents;

(G) other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(H) adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(I) such other factors as may be appropriate.

(16) If, as the result of an assessment(s) or other information, the executive director determines that conditions are necessary in addition to those required under 40 CFR Part 63, Subpart EEE, Parts 264 or 266 to ensure protection of human health and the environment, including revising emission limits, he/she shall include those terms and conditions in a Resource Conservation and Recovery Act permit for a hazardous waste combustion unit.

(b) An application specifically for a post-closure permit or for a post-closure order for post-closure care must meet the following requirements, as applicable.

(1) An application for a post-closure permit or a post-closure order shall contain information required by 40 CFR §270.14(b)(1), (4) - (6), (11), (13), (14), (18), and (19), (c), and (d), and any additional information that the executive director determines is necessary from 40 CFR §§270.14, 270.16 - 270.18, 270.20, or 270.21, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §§37.131, 37.141, 335.127, and 335.178 of this title.

(2) An application for a post-closure order shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the post-closure order and all applicable rules. Financial information submitted to satisfy this paragraph shall meet the requirements of Chapter 37, Subchapter P of this title.

(3) An application for a post-closure order or for a post-closure permit must also contain any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the TSWDA and Chapter 335 of this title including, but not limited to, the information set forth in TSWDA, §361.109.

(4) The executive director may require an applicant for a post-closure order to submit information in order to establish conditions under §305.127(4)(A) of this title.

(5) An application for a post-closure order or for a post-closure permit shall also contain the information listed in §305.45(a)(1) of this title (relating to Contents of Application for Permit).

(6) All engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geosciences Practice Act and the licensing and registration boards under these acts.

(7) One original and three copies of an application for a post-closure permit or for a post-closure order shall be submitted on forms provided by, or approved by, the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

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

§§305.64 - 305.66, 305.69

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§305.64. Transfer of Permits.

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) the name and address of the transferee;

(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

(4) a fee of \$100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fee [Fees]);

(5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not intended to relieve a transfer or of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title within six months of the date of the change of ownership or operational control of the facility. Upon demonstration

to the executive director by the new owner or operator of compliance with Chapter 37, Subchapter P of this title, the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

(1) the permittee no longer owns the permitted facilities;

(2) the permittee is about to abandon or cease operation of the facilities;

(3) the permittee has abandoned or ceased operating the facilities; and

(4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) the permittee no longer owns or controls the permitted facilities;

(2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;

(3) the permittee has failed or is failing to comply with the terms and conditions of the permit;

(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

(k) For standard permits, changes in the ownership or operational control of a facility may be made as a Class 1 modification to the standard permit with prior approval from the executive director in accordance with §305.69(1)(a)(7) of this title.

§305.65. Renewal.

Any permit renewal application that is declared administratively complete on or after September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment or modification shall also be filed before further action is taken. For applications filed under the Texas Water Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

(4) If renewal procedures have been initiated before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Permit Denial, Suspension, and Revocation [Revocation and Suspension]).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §50.145 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendments [Amendment]) provided the requirements of §305.62(f) of this title and Chapter 50, Subchapters F and G of this title (relating to Action by the Commission and Action by the Executive Director) are satisfied.

(7) The executive director may grant permission for permittees of non-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations (CFR), §122.21(g)(10) after the permit expiration date.

(8) After complying with all applicable rules in Chapters 39, 50 and 55 of this title (relating to Public Notice: Action on Applications and Other Authorizations, and Requests for Reconsideration and Contested Case Hearings; Public Comment), the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(A) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(i) was generated on-site; and

(ii) does not include waste generated from other waste transported to the site; or

(B) processing of hazardous waste if:

(i) the waste was generated on-site;

(ii) the waste does not include waste generated from other waste transported to the site; and

(iii) the processing does not include thermal processing.

(9) If the commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

(10) An application for a standard permit may be submitted in lieu of a renewal application for those units that qualify for a standard permit. The application must meet the requirements of §305.654 of this title and be submitted at least 180 days before the expiration date of the effective permit, unless the executive director allows a later date in writing. The executive director may not allow submission of applications or notices of intent later than the expiration date of the existing standard permit, except as allowed by 40 CFR §270.51(e)(2). For those units not eligible for a standard permit, a permit renewal application must be submitted.

(11) The commission may modify, or alternately, revoke and reissue a permit if the executive director has received notification under §305.654 of this title of a facility owner or operator's intent to be covered by a standard permit.

(A) The conditions of an expired permit continue until the effective date of the new permit if all of the following apply:

(i) If a timely and complete application under §305.654 of this title requesting coverage under a standard permit has been submitted; and

(i) If the executive director does not issue the standard permit before the previous permit expires.

(B) If the executive director determines that an owner or operator is not eligible for a standard permit, the conditions of the expired permit will continue if the owner or operator submits the information required in §305.65 (1) - (3) of this title within 60 days of notification that a standard permit is not allowed.

(12) A standard permit shall be renewed pursuant to this section.

§305.66. Permit Denial, Suspension, and Revocation.

(a) A permit or other order of the commission does not become a vested right and may be suspended or revoked for good cause at any time by order of the commission after opportunity for a public hearing is given. Good cause includes, but is not limited to, the following:

(1) the permittee has failed or is failing to comply with the conditions of the permit or a commission order, including failure to construct, during the life of the permit, facilities necessary to conform with the terms and conditions of the permit;

(2) the permit or the operations thereunder have been abandoned;

(3) the permit or other order is no longer needed by the permittee;

(4) the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time;

(5) a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm;

(6) the facility is being operated by a transferee before commission approval of the transfer;

(7) 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;

(8) for Class III injection wells, failure to achieve satisfactory restoration progress;

(9) for radioactive material licenses, any violation of the Texas Radiation Control Act or Chapter 336 of this title (relating to Radioactive Substance Rules), or when conditions are revealed by an application, statement of fact, report, record, inspection, or other means, which would have warranted the commission's refusal to issue a license on an original application; or

(10) such other cause sufficient to warrant termination or suspension of the authorization.

(11) the executive director has received notification under §305.42 and §305.653 of this title (relating to Application Required; and Applying for a Standard Permit) of a facility owner or operator's intent to be covered by a standard permit.

(b) The authority to discharge waste into or adjacent to the water in the state under a waste discharge permit is subject to cancellation or suspension under the Texas Water Code, §26.084.

(c) The commission may, for good cause, deny, amend, revoke, or suspend, after notice and hearing according to §305.68 of this title (relating to Action and Notice on Petition for Revocation and Suspension), any permit it issues or has authority to issue for a solid waste storage, processing, or disposal facility, for good cause, for reasons pertaining to public health, air or water pollution, land use, or for violations of the Texas Solid Waste Disposal Act, or any other applicable laws or rules controlling the management of solid waste.

(d) When the executive director determines revocation or suspension proceedings are warranted, a petition requesting appropriate action may be filed by the executive director with the commission. A person affected by the issuance of a permit or other order of the commission may initiate proceedings for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.

(e) If the executive director or an affected person intends to file a petition to revoke or suspend a permit, notice of the intention and a copy of the petition to be filed shall be personally served on or sent by registered or certified mail to the permittee at the last address of record with the commission. This

notice shall be given at least 15 days before a petition for revocation or suspension is submitted to the executive director or filed with the commission for further proceedings. Failure to provide such notice shall not be jurisdictional. For radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules), only the executive director may file a petition to revoke or suspend a license.

(f) The commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if the commission finds after notice and hearing, that:

(1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;

(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;

(3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by a rule of the commission;

(5) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(g) Before denying, suspending, or revoking a permit under this section, the commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by rule of the commission.

(h) The commission may not suspend a new commercial hazardous waste management permit on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

(i) For applications for new hazardous waste management facility permits, the commission may deny such an application if it determines that the facility is not compatible with local land use pursuant to §335.180 of this title (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

(j) For applications for new commercial hazardous waste management facility permits, the commission may not deny such an application on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title [(relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility)].

(k) For applications for any new commercial hazardous waste management facility permits, the commission shall not grant such an application if the applicant is without experience in the particular hazardous waste management technology and has not conspicuously stated that lack of experience in the application, and the commission shall not grant such an application unless the applicant provides a summary of its experience, pursuant to §305.50(12)(D) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order). The commission may not deny an application for a new commercial hazardous waste management facility permit solely on the basis of lack of experience of the applicant.

(l) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

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

(a) Applicability. This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are covered in §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(b) Class I modifications of solid waste permits.

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

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste

Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I of subsection (k) of this section by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of subsection (k) of this section [subchapter], the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title [(relating to Records of the Agency),] and §§305.41 - 305.45 and 305.47 - 305.53 of this title [(relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses)];

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title [(relating to Mailed Notice)] and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the executive director evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

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

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, subparagraphs (A), (B), (C), (D), or (E) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization; or

(E) the executive director must notify the permittee that the executive director or the commission will decide on the request within the next 30 days.

(7) If the executive director notifies the permittee of a 30-day extension for a decision, then no later than 120 days after receipt of the modification request, subparagraphs (A), (B), (C), or (D) of this paragraph must be met, subject to §50.33 of this title [(relating to Executive Director Action on Application)], as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(8) If the executive director or the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the executive director or the commission has not made a final approval or denial of the modification request by the date 50 days

prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §39.13 of this title [(relating to Mailed Notice)], and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the executive director or the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the executive director or the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendments [Amendment]) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335,

Subchapter E of this title [(relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)].

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the executive director or the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (f) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission or the executive director may change the terms of, and the commission may deny a Class 2 permit modification request under paragraphs (6) - (8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and

Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of subsection (k) of this section [subchapter], the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title [(relating to Records of the Agency),] and §§305.41 - 305.45 and 305.47 - 305.53 of this title [(relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses)]; and Subchapter Q of this chapter (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title [(relating to Mailed Notice)] and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the executive director. The notice shall include the following:

(A) all information required by §39.11 of this title (relating to Text of Mailed Notice);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

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

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request.

The comment period will begin on the date the permittee publishes the notice in the local newspaper.

Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of Chapter 39 of this title (relating to Public Notice), Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of subsection (k) of this section [subchapter], the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification,

the executive director shall consider the similarity of the modification to other modifications codified in Appendix I of subsection (k) of this section and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may grant the permittee a temporary authorization having a term of up to 180 days, in accordance with this subsection, and in accordance with the following public notice requirements:

(A) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(B) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii) - (v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with the applicable standards of Chapter 335, Subchapter F of this title [(relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)] and 40 Code of Federal Regulations (CFR) Part 264.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §39.13 of this title [(relating to Mailed Notice)]. This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the applicable standards of Chapter 335, Subchapter F of this title [(relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)] and 40 CFR Part 264; and

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

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or Section 3004 of the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §6924;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

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

(1) The commission shall notify all persons listed in §39.13 of this title [(relating to Mailed Notice)] within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(h) Newly regulated wastes and units.

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

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title [(relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities),] Chapter 335, Subchapter H, Divisions 1 through 4 of this title (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to Section 6921 of the Resource Conservation and Recovery Act Subtitle C (Subchapter III Hazardous Waste Management, 42 United States Code, §§6921 - 6939e), ; and

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

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet 40 CFR Part 63, Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of subsection (k) of this section [subchapter].

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c) that were in effect prior to October 11, 2000, as amended in 40 CFR §270.42(j) through October 12, 2005 (70 Federal Register 59402) [February 14, 2002 (67 FR 6968)], before a permit modification can be requested under this section.

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(3) Facility owners or operators may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under L.10. in Appendix I of subsection (k) of this section. The facility owner or operator must:

(A) identify the specific RCRA permit operating and emissions limits which are requested to be waived;

(B) provide an explanation of why the changes are necessary to minimize or eliminate conflicts between the RCRA permit and MACT compliance;

(C) discuss how the revised provisions will be sufficiently protective; and

(D) the executive director shall notify the facility owner or operator whether the Class 1 permit modification has been approved or denied. If denied, the executive director shall provide justification for denial.

(4) To request the modification referenced in paragraph (3) of this subsection in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR §63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the executive director); the owner or operator must:

(A) submit the modification request to the executive director at the same time the test plans are submitted to the executive director; and

(B) the executive director may elect to approve or deny the request contingent upon approval of the test plans.

(j) Military hazardous waste munitions storage, processing, and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) the facility is in existence as a hazardous waste facility, and the facility is already permitted to handle waste military munitions, on the date when waste military munitions become subject to hazardous waste regulatory requirements;

(2) on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions; and

(3) the permittee submits a Class 2 modification request within 180 days of the date when the waste military munitions become subject to hazardous waste regulatory requirements.

(k) Appendix I. The following appendix will be used for the purposes of this subchapter which relates to industrial and hazardous solid waste permit modification at the request of the permittee.

Figure: 30 TAC §305.69(k)

[Figure: 30 TAC §305.69(k)]

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes.....	1
2. Correction of typographical errors.....	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).....	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.....	1
b. Other changes.....	2
5. Schedule of compliance	
a. Changes in interim compliance dates, with prior approval of the executive director.....	11
b. Extension of final compliance date.....	3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director.....	11

7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) of this title (relating to Transfer of Permits) are followed.....11

8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units in accordance with §305.149(b)(2) or (4) of this title (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units).....2

9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit in accordance with §305.149(b)(3) or (4) of this title.....3

10. Any extension in accordance with §305.149(b)(3) of this title of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) of this title..... 3

11. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility) 11

B. General Facility Standards

1. Changes to waste sampling or analysis methods:

a. To conform with agency guidance or regulations.....1

b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods.....11

c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.....11

d. Other changes.....	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations.....	1
b. Other changes.....	2
3. Changes in procedures for maintaining the operating record.....	1
4. Changes in frequency or content of inspection schedules.....	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees.....	2
b. Other changes.....	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures).....	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.....	1
c. Removal of equipment from emergency equipment list.....	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.....	1
7. Construction quality assurance (CQA) plan:	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications.....	1
b. Other Changes.....	2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater Protection

1. Changes to wells:

a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system..... 2

b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.....1

2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director.....11

3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director.....1

4. Changes in point of compliance.....2

5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits (ACLs)):

a. As specified in the groundwater protection standard.....3

b. As specified in the detection monitoring program.....2

6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix.....2

7. Compliance monitoring program:

a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title, and §335.165 of this title (relating to Compliance Monitoring

Program).....3

b. Changes to a compliance monitoring program as required by §335.165(11) of this title, unless otherwise specified in this appendix.....2

8. Corrective action program:

a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title and §335.166 of this title (relating to Corrective Action Program).....3

b. Changes to a corrective action program as required by §335.166(8) of this title, unless otherwise specified in this appendix.....2

D. Closure

1. Changes to the closure plan:

a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director.....1

b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director.....11

c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director.....1

d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director.....1

e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.....	2
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 Code of Federal Regulations (CFR), §264.113(d) and (e).....	2
2. Creation of a new landfill unit as part of closure.....	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments.....	3
b. Incinerators.....	3
c. Waste piles that do not comply with 40 CFR §264.250(c).....	3
d. Waste piles that comply with 40 CFR §264.250(c).....	2
e. Tanks or containers (other than specified below).....	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director.....	11
g. Staging Pile	2
E. Post-Closure	
1. Changes in name, address, or phone number of contact in post-closure plan.....	1
2. Extension of post-closure care period.....	2
3. Reduction in the post-closure care period.....	3
4. Changes to the expected year of final closure, where other permit conditions are not changed.....	1

5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.....2

F. Containers

1. Modification or addition of container units:

a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix.....3

b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix.....2

c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

2. Modification of container units, as follows:

a. Modification of a container unit without increasing the capacity of the unit.....2

b. Addition of a roof to a container unit without alteration of the containment system.....1

3. Storage of different wastes in containers, except as provided in F(4) of this appendix:

a. That require additional or different management practices from those authorized in the permit.....3

b. That do not require additional or different management practices from those authorized in the permit.....2

Note: See §305.69(g) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and

028).....11

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation).....2

G. Tanks

1. Modification or addition of tank units or treatment processes, as follows:

a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) of this appendix.....3

b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) of this

appendix.....2

c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.....2

d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.....1

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....11

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.....2

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10% of the replaced tank provided:.....1

- a. The capacity difference is no more than 1,500 gallons;
- b. The facility's permitted tank capacity is not increased; and
- c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice.....2

5. Management of different wastes in tanks:

- a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) of this appendix.....3
- b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) of this appendix.....2
- c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
- d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

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

H. Surface Impoundments

- 1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.....3
- 2. Replacement of a surface impoundment unit.....3

3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.....2

4. Modification of a surface impoundment management practice.....2

5. Treatment, storage, or disposal of different wastes in surface impoundments:

a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....3

b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....2

c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

6. Modifications of unconstructed units to comply with 40 CFR §§264.221(c), 264.222, 264.223, and 264.226(d) [of this title].....11

7. Changes in response action plan:

- a. Increase in action leakage rate.....3
- b. Change in a specific response reducing its frequency or effectiveness.....3
- c. Other Changes.....2

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

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

The following modifications are applicable only to waste piles complying with 40 CFR §264.250(c).

1. Modification or addition of waste pile units:

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

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

6. Conversion of an enclosed waste pile to a containment building unit.....2

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.....3

2. Replacement of a landfill.....3

3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....3

4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....2

5. Modification of a landfill management practice.....2

6. Landfill different wastes:

a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....3

b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....2

c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

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

7. Modifications of unconstructed units to comply with 40 CFR §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 of this title.....11

8. Changes in response action plan:

a. Increase in action leakage rate.....3

b. Change in a specific response reducing its frequency or effectiveness.....3

c. Other changes.....2

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent.....3

2. Modification of run-on control system.....2

3. Modify run-off control system.....3

4. Other modifications of land treatment unit component specifications or standards required in the permit.....2

5. Management of different wastes in land treatment units:

a. That require a change in permit operating conditions or unit design specifications.....3

b. That do not require a change in permit operating conditions or unit design specifications.....2

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

6. Modification of a land treatment management practice to:

a. Increase rate or change method of waste application.....3

b. Decrease rate of waste application.....1

7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions.....2

8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops.....3

9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR §264.278(g)(2).....3

10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements.....3

11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements.....2

12. Changes in background values for hazardous constituents in soil and soil-pore liquid.....2

13. Changes in sampling, analysis, or statistical procedure.....2

14. Changes in land treatment demonstration program prior to or during the demonstration.....2

15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received.....11

16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director.....1

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.....3

18. Changes in vegetative cover requirements for closure.....2

L. Incinerators, Boilers and Industrial Furnaces

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3

2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....2

3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl₂, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3

4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards.....2

5. Operating requirements:

a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution

control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3

b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.....3

c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.....2

6. Burning different wastes:

a. If the waste contains a principal organic hazardous constituent (POHC) that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3

b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.....2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly regulated wastes and units.

7. Shakedown and trial burn:

a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.....2

b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director.....1

c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director.....11

d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director.....1

8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit.....1

9. Technology changes needed to meet standards under Title 40 CFR Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), provided the procedures of §305.69(i) of this title are followed.....11

10. Changes to Resource Conservation and Recovery Act permit provisions needed to support transition to §113. 620 of this title and 40 CFR Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) provided the procedures of 40 CFR §270.42(k) are followed.....11

M. Corrective Action

1. Approval of a corrective action management unit pursuant to 40 CFR [Code of Federal Regulations] §264.552.....3

2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 CFR [Code of Federal Regulations] §264.553.....2

3. Approval of a staging pile or staging pile operating term extension pursuant to 40 CFR [Code of Federal Regulations] §264.554.....2

N. Containment Buildings

1. Modification or addition of containment building units:

a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.....3

b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.....2

2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.....2

3. Replacement of a containment building with a containment building that meets the same design standards provided:

a. The unit capacity is not increased.....1

b. The replacement containment building meets the same conditions in the permit.....1

4. Modification of a containment building management practice.....2

5. Storage or treatment of different wastes in containment buildings:

a. That require additional or different management practices.....3

b. That do not require additional or different management practices.....2

O. Burden Reduction

1. Development of one contingency plan based on Integrated

Contingency Plan Guidance pursuant to 40 CFR §264.52(b).....1

2. Changes to recordkeeping and reporting requirements pursuant
to: 40 CFR §§264.56(i), 264.343(a)(2), 264.1061(b)(1) and (d),
264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5).....1

3. Changes to inspection frequency for tank systems pursuant to
40 CFR §264.195(b)1

4. Changes to detection and compliance monitoring program
pursuant to 40 CFR §§264.98(d), (g)(2), and (g)(3), 264.99(f), and (g)..... 1

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

§305.144, §305.150

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§305.144. Certification and Inspection.

For a new facility, the permittee may not commence storage, processing, or disposal of solid waste; and for a facility being modified, the permittee may not process, store, or dispose of solid waste in the modified portion of the facility, except as provided in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) until:

(1) the permittee has submitted to the executive director by certified mail or hand delivery a letter signed by the permittee and a Texas licensed [registered] professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(2) the executive director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or if within 15 days of submission of the letter required by paragraph (1) of this section, the permittee has not received notice from the executive director of an intent to inspect, prior inspection is waived, and the permittee may commence processing, storage, or disposal of solid waste.

§305.150. Incorporation of References.

When used in this chapter (relating to Consolidated Permits), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended through October 12, 2005 (70 Federal Register 59402) [May 14, 1999 (64 FR 26315)].

SUBCHAPTER I: HAZARDOUS WASTE INCINERATOR PERMITS

§305.172, §305.175

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement Texas Health and Safety Code, Chapter 361.

§305.172. Determining Feasibility of Compliance and Adequate Operating Conditions.

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 CFR §264.345, the commission shall establish conditions in the permit for a new hazardous waste incinerator, to be effective during the trial burn.

(1) Applicant shall propose a trial burn plan, prepared under paragraph (2) of this section, with Part B of the permit application.

(2) The trial burn plan shall include the following information:

(A) an analysis of each waste or mixture of wastes to be burned which includes:

(i) heat value of the waste in the form and composition in which it will be burned;

(ii) viscosity (if applicable), or description of physical form of the waste;

(iii) an identification of any hazardous organic constituents listed in 40 CFR Part 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, which reasonably would not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for their exclusion established. The waste analysis must rely on appropriate analytical techniques [specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent]; and

(iv) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate [the] analytical methods [specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent];

(B) a detailed engineering description of the incinerator for which the permit is sought, including:

- (i) manufacturer's name and model number of incinerator (if available);
- (ii) type of incinerator;
- (iii) linear dimensions of the incinerator unit, including the cross-sectional area of combustion chamber;
- (iv) description of the auxiliary fuel system (type/feed);
- (v) capacity of prime mover;
- (vi) description of automatic waste feed cut-off system(s);
- (vii) stack gas monitoring and pollution control equipment;
- (viii) nozzle and burner design;
- (ix) construction materials; and

(x) location and description of temperature, pressure, and flow indicating and control devices;

(C) a detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(D) a detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the decision under paragraph (5) of this section;

(E) a detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;

(F) a description of, and planned operating conditions for, any emission control equipment which will be used;

(G) procedures for rapidly stopping the waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and

(H) such other information as the executive director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (5) of this section.

(3) The executive director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section.

(4) Based on the waste analysis data in the trial burn plan, the commission shall specify as trial principal organic hazardous constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the commission based on an estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and for wastes listed in 40 CFR Part 261, Subpart D, the hazardous waste organic constituent or constituents identified in Appendix VII of that part as the basis for listing.

(5) The commission shall approve a trial burn plan if it finds that:

(A) the trial burn is likely to determine whether the incinerator performance standard required by 40 CFR §264.343 can be met;

(B) the trial burn itself will not present an imminent hazard to human health or safety or the environment;

(C) the trial burn will help the commission to determine the operating requirements to be specified (in the permit) according to 40 CFR §264.345; and

(D) the information sought in subparagraphs (A) and (C) of this paragraph cannot reasonably be developed through other means.

(6) The chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 CFR [Code of Federal Regulations] §270.62(b)(6)(i) - (ii), as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

(7) During each approved trial burn (or as soon after the burn as practicable), the applicant must make the following determinations:

(A) a quantitative analysis of the trial POHCs in the waste feed to the incinerator;

(B) a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O₂) and hydrogen chloride (HCl);

(C) a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

(D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR §264.343(a);

(E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with 40 CFR §264.343(b);

(F) a computation of particulate emissions, in accordance with 40 CFR §264.343(c);

(G) an identification of sources of fugitive emissions and their means of control;

(H) a measurement of average, maximum, and minimum temperatures and combustion gas velocity;

(I) a continuous measurement of carbon monoxide (CO) in the exhaust gas; and

(J) such other information as the executive director may specify as necessary to ensure that the trial burn will determine the compliance with the performance standards in 40 CFR

§264.343 and to establish the operating conditions required by 40 CFR §264.345 as necessary to meet those performance standards.

(8) The applicant must submit to the executive director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in paragraph (7) of this section. This submission shall be made within 90 days of completion of the trial burn, or later with the prior approval of the executive director.

(9) All data collected during any trial burn shall be submitted to the executive director immediately following the completion of the trial burn.

(10) All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports).

(11) Based on the results of the trial burn, the commission or the executive director, as appropriate, subject to §50.33 of this title (relating to Executive Director Action on Application), shall set the operating requirements in the final permit according to 40 CFR §264.345. The permit amendment or modification shall proceed according to §305.62 of this title (relating to Amendments [Amendment]) or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

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

When an owner or operator of a hazardous waste incineration unit becomes subject to Resource Conservation and Recovery Act permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE, the requirements of this subchapter do not apply, except those provisions the executive director determines are necessary to ensure compliance with 40 CFR §264.345(a) and 40 CFR §264.345(c), if the permittee or applicant elects to comply with 40 CFR §270.235(a)(1)(i). The executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.50(a)(15) or (16) and §305.127(1)(B)(iii) or (4)(A) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; and Conditions to be Determined for Individual Permits).

SUBCHAPTER Q: PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING

HAZARDOUS WASTE

§305.571, §305.572

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§305.571. Applicability.

(a) Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR) §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

(b) When an owner or operator of a cement kiln, [or] lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to Resource Conservation and Recovery Act permitting requirements after October 12, 2005 or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE, the requirements of this subchapter do not apply. The requirements of this section do apply, however, if the executive director determines certain provisions [, except those the executive director determines] are necessary to comply with 40 CFR §266.102(e)(1) and §266.102(e)(2)(iii) if the permittee or applicant elects to comply with 40 CFR §270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if the facility is an area source and elects to comply with the 40 CFR §§266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or [. The] the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.50(a)(15) or (16) and §305.127(1)(B)(iii) or (4)(A) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; and Conditions to be Determined for Individual Permits).

§305.572. Permit and Trial Burn Requirements.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through August 1, 2005 (70 FedReg 44150) [December 19, 2002 (67 FR 77687)] or as stated below:

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

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

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

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

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

(6) §270.235 - Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers and Hydrochloric Acid Production Furnaces to Minimize Emissions from startup, shutdown, and malfunction events as amended through October 12, 2005 (70 FedReg 59402).

(b) With regard to trial burn notice procedures, the chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the

persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 CFR

§270.66(d)(3)(i) - (ii) as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

SUBCHAPTER R: RESOURCE CONSERVATION AND RECOVERY ACT STANDARD

PERMITS FOR STORAGE AND TREATMENT UNITS

§§305.650 - 305.661

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed new sections implement THSC, Chapter 361.

§305.650. General.

A Resource Conservation and Recovery Act (RCRA) standard permit is a special type of permit that authorizes the owner or operator of a facility to store and/or non-thermally treat hazardous waste. It is issued under 40 Code of Federal Regulations (CFR) Part 124, Subpart G and Subpart J, concerning Procedures for Decision Making, and Subchapter R of this chapter (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units).

§305.651. Eligibility.

(a) An owner or operator may be eligible for a standard permit if:

(1) An owner or operator generates hazardous waste and then stores or non-thermally treats the hazardous waste on site in containers, tanks, or containment buildings; or

(2) An owner or operator receives hazardous waste generated off site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings.

(b) An owner or operator will be informed of eligibility when a decision is made on a permit application.

§305.652. Applicability.

The following sections of this title apply to a standard permit:

(1) §305.42(b) of this title (relating to Application Required);

(2) §305.44 of this title (relating to Signatories to Applications);

(3) §305.45(a) of this title (relating to Contents of Application for Permit);

(4) §305.50(a)(4) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(5) §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits);

(6) §305.64 of this title (relating to Transfer of Permits);

(7) §305.65 of this title (relating to Renewal);

(8) §305.66 of this title (relating to Permit Denial, Suspension, and Revocation);

(9) §305.67 of this title (relating to Revocation and Suspension Upon Request or Consent); and

(10) §305.125 of this title (relating to Standard Permit Conditions).

§305.653. Applying for a Standard Permit.

(a) An owner or operator can apply for a standard permit by following the procedures in §39.503 of this title (relating to Application for Industrial or Hazardous Waste Facility Permit) and Subchapter R of this chapter (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units).

(b) The provisions of §39.503(f) of this title do not apply to a standard permit application unless a contested case hearing is requested by the executive director, applicant or Public Interest Council.

§305.654. Information required.

The information in paragraphs (1) - (10) of this section will be the basis of a standard permit application. An owner or operator must submit the following information to the executive director when a application under §39.503 of this title (relating to Application for Industrial or Hazardous Waste Facility Permit) requesting coverage under a Resource Conservation Recovery Act standard permit is submitted:

(1) The Part A information described in 40 Code of Federal Regulations (CFR) §270.13;

(2) Materials required by §39.503 of this title;

(3) Documentation of compliance with the location standards of 40 CFR §267.18 and §305.50(a)(10)(e) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(4) Information that allows the executive director to carry out obligations under other federal laws required in 40 CFR §270.3;

(5) Solid waste management unit information required by 40 CFR §270.14(d);

(6) A certification meeting the requirements of §305.655 of this title (relating to Certification Requirements), and an audit of the facility's compliance status with Chapter 335, Subchapter U of this title (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) as required by §305.655 of this title;

(7) A closure plan prepared in accordance with §335.602(a)(6) of this title (relating to Standards);

(8) The most recent closure cost estimate for the facility prepared under §335.602(a)(10) of this title and a copy of the documentation required to demonstrate financial assurance under §335.602(c) of this title. For a new facility, the owner or operator may gather the required documentation 60 days before the initial receipt of hazardous wastes;

(9) If managed wastes are generated off-site, the waste analysis plan; and

(10) If managed waste is generated from off-site, documentation showing that the waste generator and the off-site facility are under the same ownership.

§305.655. Certification Requirements.

(a) A signed certification must be submitted based on an audit of the facility's compliance with Chapter 335, Subchapter U of this title (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit).

(b) The certification must read: I certify under penalty of law that:

(1) I have personally examined and am familiar with the report containing the results of an audit conducted of my facility's compliance status with Chapter 335, Subchapter U of this title, which supports this certification. Based on my inquiry of those individuals immediately responsible for conducting the audit and preparing the report, I believe that (include clause (i) or (ii) of this paragraph, whichever applies):

(A) My existing facility complies with all applicable requirements of Chapter 335, Subchapter U of this title, and will continue to comply until the expiration of the permit; or

(B) My facility has been designed, and will be constructed and operated to comply with all applicable requirements Chapter 335, Subchapter U of this title, and will continue to comply until expiration of the permit;

2) I will make all information that I am required to maintain at my facility by §§305.656 - 305.660 of this title (relating to Information Retention; Container Information; Tank Information; Equipment Information; and Air Emissions Control Information) readily available for review by the Texas Commission on Environmental Quality and the public; and

(3) I will continue to make all information required by §§305.656 - 305.660 of this title available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly violating Chapter 335, Subchapter U of this title.

(c) The certification must be signed following the requirements of §305.44(a) of this title (relating to Signatories to Applications).

(d) The certification must be based upon an audit that is conducted of the facility's compliance status with Chapter 335, Subchapter U of this title. A written audit report, signed and certified as accurate by the auditor, must be submitted to the executive director with the 40 CFR §124.202(b), concerning Notice of Intent.

§305.656. Information Retention.

The facility must keep the following information:

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information known to treat or store the

wastes properly under the requirements of Chapter 335, Subchapter U of this title (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit).

(3) A copy of the waste analysis plan required by 40 Code of Federal Regulations (CFR) §270.13(b).

(4) A description of the security procedures and equipment required by 40 CFR §267.14.

(5) A copy of the general inspection schedule required by 40 CFR §267.15(b). The inspection schedule must include the applicable requirements of 40 CFR §§267.174, 267.193, 267.195, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1088.

(6) A justification of any modification of the preparedness and prevention requirements of §335.602(a)(2) of this title (relating to Standards).

(7) A copy of the contingency plan required by §335.602(a)(3) of this title.

(8) A description of procedures, structures, or equipment used at the facility to:

(A) prevent hazards in unloading operations (for example, use ramps, special forklifts);

(B) prevent runoff from hazardous waste handling areas to other areas of the facility or the environment, or to prevent flooding (for example, with berms, dikes, trenches);

(C) prevent contamination of water supplies;

(D) mitigate effects of equipment failure and power outages;

(E) prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing); and

(F) prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required by 40 CFR §267.17.

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

(11) An outline of both the introductory and continuing training programs that will be used to prepare employees to operate or maintain the facility safely as required by 40 CFR §267.16 and a brief description of how training will be designed to meet actual job tasks under 40 CFR §267.16(a)(3) requirements.

(12) A copy of the closure plan required by 40 CFR §267.112. Include, where applicable, as part of the plans, specific requirements in 40 CFR §§267.176, 267.201, and 267.1108.

(13) The most recent closure cost estimate for the facility prepared under 40 CFR §267.142 and a copy of the documentation required to demonstrate financial assurance under 40 CFR §267.143. For a new facility, the required documentation must be gathered 60 days before the initial receipt of hazardous wastes.

(14) Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of 40 CFR §267.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR §267.147(a) that is planned to be in effect before initial receipt of hazardous waste for treatment or storage.

(15) Where appropriate, proof of coverage by a state financial mechanism, as required by 40 CFR §267.149 or §267.150.

(16) A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters (one inch) equal to not more than 61.0 meters (200 feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (five feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (two feet), if relief is less than 6.1

meters (20 feet). If the facility is in a mountainous area, large contour intervals should be used to adequately show topographic profiles of facilities. The map must clearly show the following:

(A) map scale and date;

(B) 100-year flood plain area;

(C) surface waters including intermittent streams;

(D) surrounding land uses (residential, commercial, agricultural, recreational);

(E) a wind rose (i.e., prevailing wind-speed and direction);

(F) orientation of the map (north arrow);

(G) legal boundaries of the facility site;

(H) access control (fences, gates);

(I) injection and withdrawal wells both on site and off site;

(J) buildings; treatment, storage, or disposal operations; or other structures (recreation areas; runoff control systems; access and internal roads; storm, sanitary, and process sewerage systems; loading and unloading areas; fire control facilities, etc.);

(K) barriers for drainage or flood control; and

(L) location of operational units within the facility, where hazardous waste is (or will be) treated or stored. (Include equipment cleanup areas.)

§305.657. Container Information.

If containers are used to store or treat hazardous waste, the following information must be kept at the facility:

(1) A description of the containment system to demonstrate compliance with the container storage area provisions of 40 Code of Federal Regulations (CFR) §267.173. This description must show the following:

(A) basic design parameters, dimensions, and materials of construction;

(B) how the design promotes drainage or how containers are kept from contact with standing liquids in the containment system;

(C) capacity of the containment system relative to the number and volume of containers to be stored;

(D) provisions for preventing or managing run-on; and

(E) how accumulated liquids can be analyzed and removed to prevent overflow.

(2) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with 40 CFR §267.173(c), including:

(A) test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(B) a description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(3) Sketches, drawings, or data demonstrating compliance with 40 CFR §267.174 (location of buffer zone (15 meters or 50 feet) and containers holding ignitable or reactive wastes) and 40 CFR §267.175(c) (location of incompatible wastes in relation to each other), where applicable.

(4) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with 40 CFR §267.175(a) and (b) and §267.17(b) and (c).

(5) Information on air emission control equipment as required by 40 CFR §270.315.

§305.658. Tank Information.

If tanks are used to store or treat hazardous waste, the following information must be kept at the facility:

(1) A written assessment that is reviewed and certified by Texas licensed professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under 40 Code of Federal Regulations (CFR) §267.191 and §267.192;

(2) Dimensions and capacity of each tank;

(3) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents);

(4) A diagram of piping, instrumentation, and process flow for each tank system;

(5) A description of materials and equipment used to provide external corrosion protection, as required under 40 CFR §267.191;

(6) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with 40 CFR §267.192 and §267.194;

(7) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of 40 CFR §267.195 and §267.196;

(8) Description of controls and practices to prevent spills and overflows, as required under 40 CFR §267.198;

(9) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of 40 CFR §267.202 and §267.203; and

(10) Information on air emission control equipment as required by 40 CFR §270.315.

§305.659. Equipment Information.

If the facility has equipment to which 40 Code of Federal Regulations (CFR) Part 264, Subpart BB applies, the following information must be kept at the facility:

(1) For each piece of equipment to which 40 CFR Part 264, Subpart BB applies:

(A) equipment identification number and hazardous waste management unit identification;

(B) approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan);

(C) type of equipment (e.g., a pump or a pipeline valve);

(D) percent by weight of total organics in the hazardous waste stream at the equipment;

(E) hazardous waste state at the equipment (e.g., gas/vapor or liquid); and

(F) method of compliance with the standard (e.g., monthly leak detection and repair, or equipped with dual mechanical seals).

(2) For facilities that cannot install a closed-vent system and control device to comply with 40 CFR Part 264, Subpart BB on the effective date that the facility becomes subject to the Subpart BB provisions, an implementation schedule as specified in 40 CFR §264.1033(a)(2).

(3) Documentation that demonstrates compliance with the equipment standards in 40 CFR §264.1052 and §264.1059. This documentation must contain the records required under 40 CFR §264.1064.

(4) Documentation to demonstrate compliance with 40 CFR §264.1060 must include the following information:

(A) a list of all information references and sources used in preparing the documentation;

(B) records, including the dates, of each compliance test required by 40 CFR §264.1033(j);

(C) a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in 40 CFR §260.11) or other engineering texts acceptable to the executive director that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in 40 CFR §264.1035(b)(4)(iii);

(D) a statement signed and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur; and

(E) a statement signed and dated certifying that the control device is designed to operate at an efficiency of 95% by weight or greater.

§305.660. Air Emissions Control Information.

If an owner or operator has air emission control equipment subject to 40 Code of Federal Regulations (CFR) Part 264, Subpart CC, the following information must be kept at the facility:

(1) Documentation for each floating roof cover installed on a tank subject to 40 CFR §264.1084(d)(1) or (2) that includes information prepared or the cover manufacturer/vendor provided describing the cover design, and certification that the cover meets applicable design specifications listed in 40 CFR §264.1084(e)(1) or (f)(1).

(2) Identification of each container area subject to the requirements of 40 CFR Part 264, Subpart CC and certification that the requirements of this subpart are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers under requirements of 40 CFR §264.1084(d)(5) or §264.1086(e)(1)(ii). Records must be included for the most recent set of calculations and measurements performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR §52.741, Appendix B.

(4) Documentation for each closed-vent system and control device installed under requirements of 40 CFR §264.1087 that includes design and performance information as specified in 40 CFR §270.24 (c) and (d).

(5) An emission monitoring plan for both Method 21 in 40 CFR Part 60, Appendix A and control device monitoring methods. The following information must be included in the plan: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedences, and procedures for mitigating noncompliances.

§305.661. Modifying a Standard Permit.

A Resource Conservation and Recovery Act standard permit can be modified by following the procedures found in 40 Code of Federal Regulations §124.211 - §124.214 and §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).