The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §305.70, Municipal Solid Waste Class I Modifications. The commission also adopts new §305.70, Municipal Solid Waste Permit and Registration Modifications. New §305.70 is adopted *with changes* to the proposed text as published in the June 8, 2001 issue of the *Texas Register* (26 TexReg 4042). The repeal is adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

In 1993, the commission adopted §305.70, Municipal Solid Waste Class I Modifications, which established a process to allow administrative approval of certain changes to municipal solid waste (MSW) permits. The section identified the changes to an MSW facility or operation that qualified for this administrative approval and defined eligible changes as those that are minor, routine in nature, do not substantially alter permit conditions, and maintain or improve environmental protection standards. In addition, the new section was considered a mechanism whereby many facilities would be able to begin compliance with the recently promulgated federal regulations (40 Code of Federal Regulations (CFR) Part 258 concerning Criteria for Municipal Solid Waste Landfills), commonly referred to as "Subtitle D upgrades," which called for stricter operation, design, and management standards for all MSW landfill facilities. Until the modification rule was adopted, changes to permits to incorporate the new standards could only have been made through the more formal amendment process. Under the modification rule, the stricter federal standards were able to be implemented more expeditiously.

The rule required mailed notice in accordance with then-existing §305.103(b) concerning Notice by Mail to certain persons if the permit modification sought was one that was marked with a superscript

"1." Although the superscript notation was discussed in the preambles to the proposed and adopted versions of the rule, the superscript did not appear in the published adopted version of the rule. Therefore, an applicant could not be required to provide the mailed notice described in the rule, and the mailed notice provisions once found in §305.103(b) had been relocated to other commission rules.

Although §305.70 only specifically addressed changes to MSW permits, the executive director utilized the rule to process minor changes to permitted and registered MSW facilities since adoption of the rule in 1993. The rule was used to process minor changes to registered facilities as there was otherwise no authorization process, other than that required for a new registration, to make minor changes to an existing registered facility.

Over the years, the executive director identified other permit and registration changes that were more appropriately handled through the modification process and generally processed those applications under §305.70(i). The language in this "catch all" provision was subject to a continuing debate over what permit changes §305.70(i) could or should cover. The effective date of the changes in this rule is delayed to effect an orderly transition and implementation of these new requirements.

SECTION BY SECTION DISCUSSION

Since the urgency of implementing Subtitle D upgrades has long since subsided, the commission on May 19, 2000 decided that the use of the §305.70 permit modification process for Subtitle D upgrades would not continue beyond May 19, 2003, and that such a change to a permit can only be accomplished through a major amendment. The commission proposed the repeal of the existing §305.70 and its

replacement with a new and expanded §305.70 to implement the May 19 decision and other changes considered necessary. Subsequently, House Bill (HB) 2912, 77th Legislature, 2001, amended Chapter 361, Texas Health and Safety Code (THSC), to add §361.120, which requires a major permit amendment to implement a Subtitle D upgrade for landfills which have stopped accepting waste for a period of five years or longer. The governor signed HB 2912 on June 15, 2001 with an effective date of September 1, 2001 for §361.120. Therefore, the provisions of §361.120 have been incorporated in this rule under §305.70(k)(4). The May 19, 2003 deadline for the Subtitle D upgrade remains in effect for any facilities not subject to THSC, §361.120.

This rule rectifies the superscript defect, excludes references to obsolete sections, establishes a clearer set of mailed notice requirements, clarifies that the rule applies to both permitted and registered MSW facilities, identifies more specifically the changes which can be made to registrations and permits through the modification process, and reflects recent legislation and the commission decision regarding Subtitle D upgrades.

The adopted rule reflects a change in philosophy to allow owners and operators the flexibility to implement those changes that are necessary to improve day-to-day operations or to prevent nuisance problems without a long wait for agency approval, provided they meet expected performance standards and do not result in a decrease in protection of the environment or public health and safety. Examples of changes which will not require a modification are changes to eliminate interim fill sectors or cells, improvements to a safety or fire protection plan, changes in interior road design or construction materials, use of alternative windblown control measures, and addition of visual screening devices.

Facilities exempt from permitting or registration will not be regulated under a permit or registration if they are located in non-waste management areas, as long as they do not affect drainage. Instead of requiring approval by modification, temporary use of alternative daily cover, and temporary changes in operating hours may be approved by the executive director under §305.70(m).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has 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 and it does not meet any of the four applicability requirements listed in §2001.0225(a). Major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. As for the four applicability requirements, the rulemaking does not exceed a standard set by federal law; exceed an express requirement of state law; exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government; nor are the repeal and new rule adopted solely under the general powers of the agency. Additionally, the rulemaking is not anticipated to 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 because the purpose of the rulemaking is to clarify and simplify the process for making changes to permits and registrations for MSW facilities. The commission solicited public comment on the draft regulatory impact analysis

determination, and comments received are addressed in the RESPONSE TO COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal the existing rule and replace it with a new rule which will specifically identify those modifications for which public notice must be given, remove references to obsolete sections, establish a clearer set of mailed notice requirements, clarify that the section applies to both permitted and registered MSW facilities, identify more specifically the changes which can be made to registrations and permits through the modification process, and reflect the recent commission decision that Subtitle D upgrades may be implemented only through a major permit amendment after May 19, 2003. The rulemaking will substantially advance the stated purpose by clarifying and providing specific provisions on the aforementioned matters. Promulgation and enforcement of this rule will not burden or affect private real property which is the subject of the rule because the new rule is only an update of the repealed rule, providing current references, clarification of procedures, and more specific information on the type of modifications that can be made to permitted and registered MSW facilities. The rule is applicable only to entities which have permits or registrations for MSW facilities. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking and found that the rulemaking is subject to the Texas

Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this rulemaking under 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are those related to the regulation of solid waste facilities in 31 TAC §501.14(d)(1)(I) and (d)(2). These policies require that solid waste facilities 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 federal Solid Waste Disposal Act, and that the commission shall comply with the policies in 31 TAC §501.14(d) when issuing permits and adopting rules under THSC, Chapter 361. The specific purpose of the rulemaking is to repeal an existing rule and replace it with a new rule which will specifically identify those modifications for which public notice must be given, remove references to obsolete rules, establish a clearer set of mailed notice requirements, clarify that the rule applies to both permitted and registered MSW facilities, identify more specifically the changes which can be made to registrations and permits through the modification process, and reflect the recent commission decision that landfill permit upgrades to meet standards under Subtitle D of the federal Solid Waste Disposal Act may be implemented only through a major permit amendment after May 19, 2003. Promulgation and enforcement of the adopted rule will be consistent with the applicable CMP goals and policies, and the rule will not reduce the capability of a facility to protect human health and the environment. The commission solicited public comment on the applicability of the CMP and on the consistency determination of the proposed rule, and the only responder was the Texas Department of Transportation, who stated that it had reviewed

the proposed amendments for consistency with state law and had no comments or suggestions to offer.

HEARING AND COMMENTERS

The commission held a public hearing on the proposal in Austin on August 17, 2001. The original comment period did not provide for a public hearing; however, Clean Water Action requested that a public hearing be held on the proposal. Therefore, a public hearing was scheduled and the close of the comment period was extended to August 17, 2001. Fifteen commenters submitted comments during the public comment period. Five of the six commenters who provided oral comments at the public hearing also had submitted written comments.

The rulemaking was generally opposed by the Texas Chapter of the National Solid Wastes Management Association (NSWMA); Republic Services, Inc. (RSI); the Lone Star Chapter of the Solid Waste Association of North America (TxSWANA); Texas Disposal Systems Landfill, Inc. (TDSL); and Waste Management of Texas, Inc. (WMT). Comments provided by NSWMA were also endorsed by El Paso Disposal (EPD); G. O. Weiss, Inc. (GOW); Olympic Waste Services (OWS); TDSL; and Trinity Waste Services (TWS). TWS, NSWMA, RSI, and WMT recommended withdrawal of the proposed rule. The Municipal Solid Waste Management and Resource Recovery Advisory Council (Council) recommended withdrawal of the proposed rule but subsequently indicated its support of the rule proposal in general as further described herein.

Clean Water Action Texas and Henry, Lowerre and Frederick (CWAT/HLF) submitted joint comments, the commission's Public Interest Counsel (PIC), and one individual recommended changes

to the rule package. The Texas Department of Transportation conducted a review of the proposed rule as it relates to the CMP but offered no comment or suggestion.

The Council discussed this rule at meetings conducted by the Council on June 8, 2001, September 7, 2001, and November 19, 2001. At these meetings, the Council elaborated on and modified its written comments submitted during the formal comment period. Although the Council had originally recommended to withdraw the proposed rule, it later indicated that it supported the majority of the proposed rule as modified in response to comments.

RESPONSE TO COMMENTS

NSWMA, RSI, and WMT commented that the proposed rule should be withdrawn, due to the negative impact on the waste industry.

The commission believes that the proposed rule required revisions in response to comments, but does not agree that the rule should be withdrawn. The commission believes that this rule is necessary to provide a process for allowing minor changes to registered facilities, for establishing mailed notice requirements for appropriate permit and registration changes, for more specifically identifying changes which can be made to registrations and permits through the modification process, and for reflecting recent legislation and commission decisions regarding Subtitle D upgrades. The commission believes that the modification process has shown to be useful for implementing minor changes necessary for day-to-day operations in lieu of requiring a new registration or a permit amendment, and that this rule will facilitate the process for making those

changes for MSW facilities.

CWAT/HLF commented that proposed §305.70 expands the limitations on modifications, allows substantive changes that will not maintain or improve protection of human health and the environment, and that the changes represent a major environmental rule, subject to Texas Government Code, §2001.0225.

The commission does not agree that §305.70 expands the limits on conditions that can be revised through the modification process or that it will allow substantive changes to permit or registration conditions, and has not revised the rule based on these comments. The expansion is the result of adding to the list of specifically listed modifications, those modifications which were more commonly requested under a "catch-all" provision of previously existing §305.70(i). The commission believes that adding the more commonly requested "catch-all" modifications to the specific list of allowable modifications will provide a ready aid to the regulated community and staff for identifying what changes can be processed as modifications without having to evaluate each non-listed modification request through a screening committee to determine if it qualifies as a modification. The rule provides that modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment. An application for a substantive change to a permit or registration condition would not meet these criteria and could not be processed using the modification procedures. The commission does not agree that §305.70 is a major environmental rule as defined in the Texas Government Code, or that it meets any of

the four applicability requirements listed in §2001.0225(a), that is, that it exceeds a standard set by federal law; exceeds an express requirement of state law; exceeds a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government; or that the rule is adopted solely under the general powers of the agency.

CWAT/HLF commented that the changes will adversely affect public health, environment, land values, and other property interests, and that the fiscal notes and cost/benefit analysis ignored the public impact from the rule. One individual commented that the commission failed to perform an extensive impact statement on affected parties such as landfill owners/operators.

The commission has not changed the rule based on these comments. The commission performed an evaluation of the rulemaking impact and believes the rule will not adversely affect in a material way the economy, a sector of the economy (including landfill owners/operators), productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the purpose of the rule is to clarify and simplify the process for making changes to permits and registrations for MSW facilities.

CWAT/HLF commented that the rule will result in additional costs and burden to the state as operators attempt to achieve large changes to the permit through a piecemeal approach, and recommended that the commission impose a limit of two modifications in a 12-month period.

The commission anticipates that operators may utilize this rule to update facility permits or registrations; however, the criteria in §305.70(d), which provides that modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment, will prevent an influx of applications from operators attempting a piecemeal approach to major changes. The commission believes that eliminating the ability to accommodate unanticipated changes at a facility through a maximum allowable number of modifications is not justifiable and has not changed the rule in response to these comments.

CWAT/HLF and NSWMA commented that the need for the rule has not been adequately explained, and CWAT/HLF commented that a record of factual support for the changes must be created. NSWMA, RSI, TxSWANA, and WMT commented that the rule is unnecessary, will discourage innovation and environmental improvement at facilities, and that the rule attempts to include excessive detail into permits, requiring an increased need for permit modifications that will burden both the regulated community and the commission. NSWMA, TxSWANA, and WMT commented that the rule attempts to regulate previously unregulated and non-MSW activities is contrary to the commission's stated performance-based regulatory approach, and will result in an increased number of violations with far-reaching impacts due to an increased emphasis on compliance history.

The commission believes that owners/operators of public and private sector facilities clearly and repeatedly have demonstrated a need to make minor changes to their permits/registrations to meet changing industry conditions or as a means to resolve notices of violation from the commission.

During the four-year period 1997 - 2000, the commission processed approximately 450 - 650 modification requests annually, with approximately 50% of the modifications processed under the "catch-all" provision, former §305.70(i). The commission believes that adding the more-commonly requested "catch-all" modifications to the specific list of allowable modifications in this rule will provide a ready aid to the regulated community and staff for identifying what changes can be processed as a modification without having to evaluate each non-listed modification request through a screening committee to determine if it qualifies as a modification. The commission does not agree that §305.70 will discourage innovations in the MSW industry, or that it regulates previously unregulated or non-MSW activities, or that it will result in an increased need for permit modifications. The modification was a previously existing requirement for making minor changes to a permit, including conditions in the Site Development Plan and Site Operating Plan. Many permits and registrations were written with very specific requirements or conditions that have resulted in notices of violation from normal operational changes. The commission encourages applicants to include language in the permit/registration applications that meets regulatory requirements and allows flexibility and innovation in daily operational needs; however, a modification has been and is necessary to replace existing language with performance-based measures. When used for this purpose, the commission believes that the modifications will result in a reduced potential for notices of violation.

TxSWANA commented that emphasis should be on identifying the basis for amendments or general categories of changes that would be processed as an amendment or a modification, and that a list of changes requiring only notification should be created. TxSWANA commented that a list of

modifications can never be comprehensive and that the commission should clarify that the purpose of this rule is not to create a new basis upon which operators can be found liable, but to codify listed changes that have been considered modifications in the past.

The commission has not changed the rule based on these comments. The commission agrees that a list of major changes requiring a permit amendment or a list of minor activities which require no review or approval would be useful. However, the commission believes it has been demonstrated that both lists would be far less utilized than the modification process. The commission acknowledges that the modifications in §305.70 do not represent new modifications, nor are they intended to comprise a comprehensive list. The modifications listed in §305.70(j) include many of the more commonly requested modifications processed for MSW owners/operators under the "catch-all" provision of the former §305.70(i), and serve as examples of the types of activities that may be processed as a modification. A provision remains under §305.70(l) for accommodating non-listed changes that may qualify as modifications.

CWAT/HLF commented that the use of the term "special conditions" in §305.70(a) is not clear, leaving both the term and rule subject to interpretation.

The commission agrees that the term is not defined and has removed the word "special" from the rule, clarifying applicability to regulated MSW activities and any conditions specifically ordered by the commission or included by the executive director as a result of negotiations between the applicant and interested persons.

One individual commented that §305.70(b) should be revised to indicate that the terms "permit" and "registration" include only the documents and attachments defined in 30 TAC Chapter 330, Subchapter E.

The commission has not changed the rule based on this comment. The documents pertaining to the permit or registration are defined in MSW regulations and the commission believes this definition will not be clarified further by the suggested language.

NSWMA and TxSWANA commented that §305.70(c) should be revised to read "maximum limit of waste acceptance." PIC commented that the reference to Type V facilities should be deleted to indicate applicability to all types of facilities.

The commission agrees with the commenters that the suggested revisions clarify restriction to a previously established maximum volume and that the restriction may apply to other than Type V facilities. Section 305.70(c) has been revised to include these changes.

PIC commented that §305.70(d) should be revised to state "except as provided in subsection (k)," to clarify that no changes other than those listed in §305.70(k) would be considered.

The commission believes that modifications other than those specifically listed in subsection (k) may be appropriate when accompanied by public notice, and the ability to request those modifications should not be limited. However, the commission has revised §305.70(d) to clarify

that modifications processed under §305.70(k) still must be changes that are minor in nature, and which do not substantially alter the permit or registration conditions, do not reduce the capability of the facility to protect human health and the environment, but which may have a greater potential to affect neighboring landowners.

One individual commented that §305.70(e) should allow that a permittee or registrant who has filed a modification request would not be subject to a notice of violation (NOV) in the related area if commission review of the request is pending.

The commission has not changed the rule based on this comment. Owners/operators currently have the ability to refute NOVs and the commission believes the suggested revision would not be of benefit to either the inspection or modification procedures.

NSWMA and TxSWANA commented that language in §305.70(f) should be revised from "shall result in the application being returned" to "may result in the application…" to allow discretion in returning an application.

The commission agrees that the rule should allow discretion in the return of an application and has revised §305.70(f) to allow this flexibility. Section 305.70(f) specifies administrative and signatory requirements for submitting an application.

One individual, CWAT/HLF, and PIC commented that the rule should require that one copy be sent

directly to the commission's regional office. PIC also recommended that one copy be submitted directly to the commission's Central Records.

The commission agrees that the application should be more easily available to potentially affected parties and has included requirements for delivery to the appropriate commission regional office. Routing to Central Records from the MSW Permits Section ensures proper identification of the submittal prior to insertion in the public record, and the commission has not included a requirement for delivery to Central Records in the rule.

CWAT/HLF commented that §305.70(f) appeared to eliminate the use of a notice of deficiency (NOD) to require additional information in conflict with §305.70(g), and that applicants should provide a sworn statement of justification.

Section 305.70(f) relates to additional administrative requirements and the commission does not agree that this subsection conflicts with actions provided for in §305.70(g), which is related to response resulting from technical review. The commission believes that the documentation of accuracy provided by the signatory certification required in §305.44 is adequate and has not revised the rule based on these comments.

One individual commented that §305.70(f) should describe in detail what constitutes an engineering document rather than referring to a regulatory citation.

The reference in §305.70(f) to engineering seal and signatory requirements in §330.51(d), does not pertain to document definition, and the rule has not been changed based on this comment.

One individual commented that a specific review time should be identified in §305.70(g) rather than requiring an action within a 60-day period. NSWMA commented that the rule may allow staff to delay action on the application until after the public notice period has expired or until near the completion of the 60-day review period. NSWMA, RSI, WMT, and one individual commented that the option in §305.70(g)(4) to extend the commission review period will result in an unpredictable response time, placing an unnecessary burden on the permittee. CWAT/HLF commented that the 60-day deadline for commission action is inadequate for public participation, and does not provide the commission adequate time to respond to public comment.

The commission agrees that §305.70(g) provides adequate response options without §305.70(g)(4), and has removed this provision and the requirement in §305.70(g)(3) for resubmitting an application in response to an agency request for information. The commission believes the schedule for commission action must provide staff adequate time to review application materials and the flexibility to accommodate varying workloads, without being overly burdensome to the regulated community. The commission believes this can be accomplished through the 60-day review period and has retained it in §305.70(g). The rule has been revised to more clearly identify time frames for the comment and response periods, and the commission has deleted reference to a major amendment in §305.70(g)(5). Municipal solid waste permits may be revised under the procedures for minor amendments, as defined in §305.62(c), and §305.70(g)(5) has been revised to

not exclude these procedures. The commission acknowledges that response to public comment may not be accommodated by the 60-day time frame but a response to comments, in accordance with 30 TAC §55.101, is mandatory only for applications filed under THSC, Chapter 361 and does not apply to the modification procedures.

One individual stated that §305.70(h) should be revised to include an option for the permittee to request a meeting to discuss an application prior to completion of the commission review.

The commission has not changed the rule based on this comment. Owners/operators may request a meeting with the commission at any time to discuss permit issues, and the commission does not believe provisions to request a meeting are necessary in the rule.

NSWMA and WMT commented that mailed notice requirements in §305.70(i) are excessive, unprecedented, and will be burdensome to operators and commission staff. NSWMA commented that notice should be eliminated or required of only a few activities, and TxSWANA stated that mailed notice should be limited to a post-approval procedure. RSI and WMT commented that the required notice may fuel controversy over landfill operations, and adversely impact community relations. CWAT/HLF commented that all modifications should have some form of notice as do the industrial and hazardous waste rules, and that notice for only some activities has not been justified. One individual commented that the public notice requirements are unfairly burdensome to the operators when activities improve facility operations and that notice should be removed from the rule because it is not required for permit modifications by the Administrative Procedure Act. The commenter also stated that notice

may be misinterpreted by a potentially affected party, and expressed concern that a modification might be denied solely on community opposition to an application.

The commission believes that a pre-approval notice is appropriate to allow affected parties an opportunity to review the application and to provide the executive director with information they believe necessary for proper evaluation, and has revised the rule to provide a Notice of Application and Preliminary Decision after technical review is complete but before action is taken on the application. Only a limited list of modifications require notice in this rule. Although the ability to require notice for unspecified modifications has been retained in §305.70(l), the commission anticipates that the majority of future §305.70 applications will not require public notice. The commission does not agree that public concern is equal for MSW and hazardous waste facilities, or that mailed notice is necessary for every operational change at an MSW site. However, the commission believes that public notice should be required when an activity has a potential to affect neighboring landowners or the community even if those activities may improve facility operations (e.g., alternate daily cover), and that a pre-approval notice is necessary to allow those parties an opportunity to review the application. Public comment will be considered if provided during the evaluation period; however, opposition to an application does not in itself constitute adequate justification for denial by the commission.

NSWMA commented that the phrase "in order to qualify" should be deleted from §305.70(j) because it creates uncertainty that the listed items will be processed as modifications.

The commission has deleted the phrase "in order to qualify" from §305.70(j) and clarified that the listed items may be processed as a modification when meeting the requirements in §305.70(d).

CWAT/HLF commented there is an apparent conflict between §305.70(j)(2)(B) and (5).

The commission agrees that §305.70(j)(2)(B) appears to conflict with §305.70(j)(5) and has removed §305.70(j)(2)(B) from the rule.

NSWMA commented that authorization under §305.70(j)(7) will discourage activities necessary to facility operation and should be required only if not specified by the permit. CWAT/HLF commented that language and the difference in language of §305.70(j)(7) and (k)(10) are very unclear.

The commission does not believe that the location of an MSW management activity as described in §305.70(j)(7) is inconsequential or that it need not be reflected on the site plan. The commission also disagrees that requiring that it be shown on the site plan will discourage new facility operations. Activities under §305.70(j)(7), other than registrations, may be evaluated for impact to drainage but otherwise have only general regulatory requirements. Section 305.70(k)(6) includes activities subject to an approval process other than registration. The commission has revised §305.70(j)(7) and (k)(6) to clarify applicability to MSW facilities and activities.

NSWMA commented that language in §305.70(j)(8) regarding the addition of a wash pad should be deleted. PIC commented that §305.70(j)(8) should exclude changes to all gate locations and suggested

clarification regarding the addition of a wash pad.

The commission intends that the reference to the entry gate in §305.70(j)(8) refers only to changes at the site entrance and does not include changes to other on-site gates. The commission believes if a wash pad is constructed on-site, it should be shown on the site plan, but acknowledges that this activity does not fit the category of a frequently submitted modification and has adopted the suggested revision.

NSWMA, RSI, and WMT commented that §305.70(j)(10) seeks too much detail, impairing the ability to conduct normal operations. PIC commented that reference to equipment changes should be deleted from §305.70(j)(10) to allow evaluation of changes on a case-by-case basis for the necessity of public notice.

The commission agrees that the language in §305.70(j)(10) allows an overly-broad interpretation of changes necessitating revision to permit documents and has revised this provision to encourage operators to incorporate performance-based requirements for existing operational needs. The commission does not agree that public notice should be required for equipment changes which comply with criteria in §305.70(d).

WMT commented that §305.70(j)(7), (10) - (12), (14), and (17) represent needless control over daily operations, and are contrary to the stated goal of flexibility.

The commission acknowledges that some revision of the proposed rule in response to the comment was appropriate for §305.70(j)(10) and has revised it deleting §305.70(j)(12) and (14). However, the commission disagrees that the modifications listed in this rule will impede the goal of flexibility and believes the modification process is necessary to reflect changes in minor permit conditions and essential for the replacement of overly-specific or outdated operational requirements.

NSWMA commented that §305.70(j)(11) should be revised to clarify that only improvements can be made to internal drainage.

The commission does not agree that §305.70(j)(11) should exclude changes which produce equivalent internal stormwater run-on/run-off controls and has revised §305.70(j)(11) to allow minor changes to internal drainage features that result in no impact to offsite drainage, to provide additional flexibility in operations.

NSWMA commented that changes referenced in §305.70(j)(12) are unclear and should be deleted.

The commission agrees that changes to perimeter roads, berms, or the buffer resulting from alteration of the drainage system would be accommodated in an application for drainage system revisions and has deleted the proposed §305.70(j)(12) and replaced it with the formerly-proposed §305.70(k)(1)(B).

NSWMA, TxSWANA, and WMT commented that §305.70(j)(14) relates to non-MSW activities and

should be removed.

The commission does not agree that access to a borrow area to acquire daily cover material for the landfill, as referenced in §305.70(j)(14), is an activity unrelated to the management of solid waste. However, the commission agrees that §305.70(j)(14) is too narrowly worded and has deleted it from the rule and replaced it with the formerly-proposed §305.70(k)(2).

NSWMA commented that §305.70(j)(17) should include a maximum distance for monitor well replacement.

The commission believes that a monitor well replacement must be based on equivalent or improved performance and has not added a specific distance within which a well can be relocated in §305.70(j)(17). The commission made a minor revision to §305.70(j)(17) for consistency in use of the term "monitoring well."

PIC recommended that language be added to §305.70(j)(4) - (6), (9), (18) - (21), and (23) to explicitly state that these changes will maintain or provide for increased protection.

The commission believes that requiring applications submitted under §305.70(j)(4) - (6), (9), (18) - (21), and (23) to maintain or provide for increased protection is unnecessary inasmuch as §305.70(d) already requires that modifications not reduce the capability of a facility to provide protection, thereby also providing the option to maintain or increase protection. However, the

commission has determined that some changes to a landfill gas collection system may be necessary to comply with air emission requirements and that a delay for an MSW permit modification could result in a violation of other (not MSW) permit requirements. Section 305.70(j)(21) has been revised to ensure that operators are not inadvertently placed in violation of other permit requirements.

PIC commented that language should be deleted from §305.70(j)(23) to limit changes to the Groundwater Sampling and Analysis Plan.

The Groundwater Sampling and Analysis Plan contains information relating to many aspects of the sampling program and the commission does not agree that revisions to the plan should be limited to only those specified in §305.70(j)(23). The commission has not changed the rule based on this comment, but has revised §305.70(j)(23) to clarify this flexibility.

CWAT/HLF commented that §305.70(j)(26) is an activity that should require a major amendment.

The commission agrees that except as allowed for sites performing an upgrade to meet the requirements of 40 CFR Part 258 in accordance with §305.70(k)(4), the installation of a groundwater monitoring system where one had not previously existed requires a permit amendment, and has removed §305.70(j)(26) from the rule. The succeeding subsections have been renumbered accordingly.

NSWMA commented that financial assurance updates are required by rule and §305.70(j)(30) - (32) should not be processed as modifications.

The commission agrees that financial assurance updates for inflation should not be permit modifications, but believes that other revisions to closure cost estimates which affect financial assurance or financial assurance for corrective action as referenced in §305.70(j)(30) - (32), should be reflected as requirements of the site permit. Reference to §330.281 and §330.283 concerning Closure for Landfills; and Post-Closure Care for Landfills has been included in §305.70(j)(30) for clarification. The commission has combined §305.70(j)(30) and (31) and has removed reference to registered and exempted facilities to eliminate repetitive language and redundant financial assurance requirements.

PIC recommended minor revisions to clarify the subparagraphs under §305.70(k)(1). NSWMA, RSI, and TxSWANA commented that §305.70(k)(1)(B) should not require notice if an activity is already authorized in the permit.

The commission agrees that a previously authorized activity, as described under §305.70(k)(1)(B), should not require public notice and has moved this activity to §305.70(j)(12). The commission also believes that many changes to the sequence of landfill development have no impact on adjoining property owners and has relocated this activity to §305.70(j)(32) with a provision that changes which would potentially affect the adjacent property owners or community will require notice. If evaluation indicates that the sequence change will result in the development of an area

where landfilling could have been reasonably expected not to have occurred for several years and which may adversely affect an adjoining landowner as a result, public notice will be required in accordance with §305.70(i). The commission believes §305.70(k)(4) (relating to changes to entry gate location that do not alter access traffic patterns) represents an activity of dissimilar impact compared to the remaining modifications in §305.70(k), and has relocated this activity to §305.70(j)(33). The succeeding paragraphs have been renumbered accordingly.

NSWMA and TxSWANA commented that metes and bounds changes described under §305.70(k)(2) should require a permit amendment.

The commission agrees that substantial changes to metes and bounds descriptions require a permit amendment, and has revised §305.70(k)(2) to allow minor changes to boundary description and has moved this activity to §305.70(j)(14). The succeeding paragraphs have been renumbered accordingly.

NSWMA commented that authorization to use alternate daily cover under §305.70(k)(3) should be subject to revocation if site conditions deteriorate.

The commission agrees that authorization of alternate daily cover under §305.70(k)(3) can be revoked if site conditions deteriorate; however, this is true of any modification and the commission has not changed the rule based on this comment.

PIC recommended a minor revision to clarify §305.70(k)(5)(F).

The commission has made the recommended revision to §305.70(k)(5)(F) by inserting "or" between the two clauses.

NSWMA and TxSWANA commented that post-closure use under §305.70(k)(7) should not require notice for non-MSW activities or changes in compatible use, as long as landfill integrity is maintained. WMT commented that the intent of §305.70(k)(7) is unclear.

The commission agrees that notice may not be justified for all changes in post-closure use under §305.70(k)(7) and has included reference to §330.255 concerning Post-Closure Land Use, which requires executive director approval for activities that may disturb the final cover and relocated this modification to §305.70(j)(28) with a provision that changes which would potentially affect the adjacent property owners or community will require notice. The succeeding paragraphs have been renumbered accordingly.

NSWMA and TxSWANA commented that §305.70(k)(8) should be revised to maintain consistency with HB 2912, and NSWMA noted that revisions also will be necessary for §330.1(a). CWAT/HLF commented that §305.70(k)(8) should require a permit amendment, and NSWMA commented that the provision limiting the applicant to three NODs should be deleted. PIC recommended a minor revision to clarify §305.70(k)(8).

Section 305.70(k)(8) has been renumbered to §305.70(k)(4) and has been revised to incorporate the applicable provisions of HB 2912. The commission agrees that the Subtitle D upgrade should require a major amendment and established a deadline of May 19, 2003 for completion of the upgrade as a modification. The commission agrees that a maximum allowance of three NODs should not be in the rule and has deleted it from §305.70(k)(4), with revisions for clarification. The commission does not believe it is necessary to revise §330.1(a) concerning Declaration and Intent and does not intend to open that section for revision at this time. The provisions of §330.1(a) and §305.1(a) provide overlapping authorities to assure that the provisions of THSC, §361.120, as adopted under HB 2912 are enforced, including the requirement that an owner or operator of an MSW landfill facility comply with any other applicable federal rules, laws, regulations, or other requirements.

NSWMA, RSI, TxSWANA, and WMT commented that §305.70(k)(9) could discourage or delay the installation of upgraded gas collection systems, and NSWMA and TxSWANA commented that notice should not be applied to gas system additions or well replacements. CWAT/HLF commented that gas system revisions performed under §305.70(k)(9) might be less protective to public health.

The commission agrees that voluntary improvements to a landfill gas collection system should not require notice and has revised §305.70(k)(9), now renumbered as §305.70(k)(5), to indicate that notice will be provided when remedial action is required by MSW regulation. Changes less protective of the environment do not meet the criteria in §305.70(d) and cannot be processed as a modification.

NSWMA and TxSWANA commented that §305.70(k)(10) should not require notice if an activity is allowed by the permit but not identified for a specific location and, with RSI and WMT commented that the rule is subject to interpretation and should not require notice for unspecified "changes" or "activities." TxSWANA commented that §305.70(k)(10) should not require notice for the deletion of an activity.

The commission does not agree that notice should be eliminated for an activity of the type in §305.70(k)(10), now renumbered as §305.70(k)(6), if it has been authorized for an unspecified location. However, the commission has revised §305.70(k)(6) to include only the more commonly-requested activities. The commission believes that these activities may potentially impact adjacent landowners and notice is an appropriate action. The commission also does not agree that "changes" is subject to interpretation other than might occur in everyday usage, and believes the examples under §305.70(k)(6) illustrate the types of activities being referenced. The commission agrees that the deletion of an activity should not require public notice and has deleted it from §305.70(k)(6).

NSWMA commented that the provision for public notice at the executive director's discretion in §305.70(l) should be eliminated and that notice should apply only to specific modifications. TxSWANA commented that the "catch-all" provision for processing modifications not identified under §305.70(j) and (k) produces uncertainty as to what may qualify as a modification, thereby inhibiting effective planning.

The rule has been revised to clarify that modification applications which require public notice must be of similar impact as modifications listed in subsection (k). The commission believes it requires discretion in determining if an application meets the criteria for a modification under §305.70(d) and §305.70(e), and if mailed notice is appropriate for an application. The commission has retained flexibility in determining application eligibility and the necessity for mailed notice, in lieu of requiring a permit amendment. A reference to §305.70(i) has been added to highlight notification requirements.

NSWMA expressed concern that staff may attempt to apply the temporary authorizations under §305.70(m) to non-MSW or other on-site activities not included in the permit activities, noting that activities conducted in an emergency situation might be considered a violation of the permit. NSWMA and TxSWANA commented that language regarding temporary authorizations in former §305.70 should be retained. PIC commented that public notice should be provided if an applicant seeks a temporary authorization, and recommended that the six-month extension for use of alternate daily cover be deleted.

The commission does not agree that a request for authorization, which is initiated by the owner/operator, can be used by staff to impose operational requirements in lieu of a permit modification, and has retained subsection (m). The temporary authorization is intended to allow permittees additional flexibility in addressing changes in daily operations, including unexpected conditions or emergency situations. To meet these goals, the rule has been revised to include a verbal authorization process for emergency situations, and authorization of activities necessary to

prevent the disruption of waste management activities. The commission does not believe public notice is consistent with this objective and has not included it in the rule. The commission agrees with PIC that a six-month period is adequate to evaluate alternate daily cover, but believes that additional time may be necessary to evaluate cover effectiveness for odor and vector control as a result of varying seasonal or climatic conditions. The possible extension under §305.70(m) has been revised to include that condition.

NSWMA and TxSWANA commented that the timing of the motion to overturn under §305.70(n) should be adjusted to fit a post-approval public notice procedure.

The commission has not changed the rule based on these comments. The commission believes the pre-approval public notice is necessary to provide an adequate amount of time for public review of an application and related materials.

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of MSW; §361.024, which provides the commission authority to adopt and promulgate rules consistent with the general intent and purposes of THSC; §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store,

process, or dispose of solid waste under THSC, Chapter 361; and §361.064, which authorizes the commission to prescribe the form of and reasonable requirements for the permit application; and the procedures for processing the application.

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

§305.70

§305.70. Municipal Solid Waste Class I Modifications.

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

§305.70

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of MSW; §361.024, which provides the commission authority to adopt and promulgate rules consistent with the general intent and purposes of THSC; §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under THSC, Chapter 361; and §361.064, which authorizes the commission to prescribe the form of and reasonable requirements for the permit application; and the procedures for processing the application.

§305.70. Municipal Solid Waste Permit and Registration Modifications.

(a) This section applies only to modifications to municipal solid waste (MSW) permits and registrations related to regulated MSW activities. Modifications to industrial and hazardous solid waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Changes to conditions in an MSW permit or registration which were specifically

ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section. The effective date of the repeal of existing §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) and replacement with this new §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) is June 3, 2002. Applications for modifications filed before this new section becomes effective, will be subject to the section as it existed prior to June 3, 2002.

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

(c) Except as provided in subsection (k) of this section, any increase in the landfill capacity authorized for waste disposal or any increase in the permitted or registered daily maximum limit of waste acceptance shall be subject either to the requirements of §305.62(c)(1) of this title (relating to Amendment) in the case of a permitted facility, or to the requirements of a new registration in the case of a registered facility.

(d) Permit and registration modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the

capability of the facility to protect human health and the environment.

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

(1) a description of the proposed change;

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

(3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of a permit or a registration (i.e., a site development plan, site operating plan, engineering report, or any other approved plan attached to a permit or a registration document). These revisions shall be marked and include revision dates and notes as necessary in accordance with §330.51(e)(4) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.64(b) and (c) of this title (relating to Additional Standard Permit Conditions for Municipal Solid Waste Facilities);

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

(5) for those modifications submitted in accordance with subsection (l) that the executive director determines that notice is required and for those listed in subsection (k) of this section, an updated landowners map and an updated landowners list as required under §330.52(b)(4)(D) and (b)(5) of this title (relating to Technical Requirements of Part I of the Application).

(f) The permittee or registrant must submit one original and two copies of the modification application in accordance with §305.44 of this title (relating to Signatories to Applications). The applicant shall provide one of the two copies to the appropriate commission regional office. Failure to submit the modification application with complete information may result in the application being returned to the permittee or registrant without further action. Engineering documents must be signed and sealed by the responsible licensed professional engineer as required by §330.51(d) of this title.

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

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

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

(B) deny the application;

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

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

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

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

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

executive director) after the notice requirements have been met as evidenced by the certification of notice filed with the chief clerk.

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

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

(i) If a permit or registration modification is listed in subsection (k) of this section or if a permit or registration modification application is made under subsection (l) of this section and the executive director determines that notice is required, the permittee or registrant must prepare and provide Notice of Application and Preliminary Decision after technical review is complete in accordance with 30 TAC §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration). If notice is required, the applicant must file a current landowner list under §305.70(e)(5) of this title and §39.413(1) of this title (relating to Mailed Notice). The notice shall state that a person may provide the commission with written comments on the application within 23 days after the date the applicant mails notice. Before acting on an application, the executive director

shall review and consider any timely written comments. The executive director is not required to file a response to comments. Prior to approval of a modification application, the permittee or registrant must file certification, on a form prescribed by the executive director, that notice was provided as required by §39.106 of this title. The chief clerk shall mail notice of issuance of a modification in accordance with 30 TAC §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update). Section 50.133(b) of this title does not apply to modifications which do not require notice under subsection (j) or (l) of this section.

(j) Paragraphs (1) - (33) of this subsection are allowable permit and registration modifications if they meet the criteria in subsection (d) of this section (i.e., they must apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment):

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

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

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

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

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

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

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

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

(7) changes to the site layout plan that add or delete a properly registered or exempted MSW facility/activity, provided that the facility/activity either requires a registration or would be exempt were it located offsite (e.g., a used or scrap tire collection area, a compost operation, a recycling collection area, a liquid waste processing facility, a registered transfer station, a citizens' collection area used for collection of non-putrescible recyclable materials either stockpiled or collected in bins, a citizens' collection station, a beneficial landfill gas recovery plant, a brush collection/chipping/mulching area, stockpiles of non-putrescible recyclable materials, etc.);

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

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

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

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

(12) the addition of design and operational requirements in accordance with §330.137 of this title (relating to the Disposal of Industrial Wastes) for the opening of a dedicated trench or area that will accept Class 1 nonhazardous industrial waste, provided that the landfill permit authorizes the acceptance of that waste and that the dedicated trench or area is located within the disposal footprint specified in the site development plan or MSWLF permit;

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

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

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

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

(17) new monitoring wells that replace existing monitoring wells (e.g., landfill gas or groundwater monitoring wells) that have been damaged or rendered inoperable, with no change to the design or depth of the wells or to the monitoring system design;

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

(19) installation of a landfill gas monitoring system;

(20) changes to an existing landfill gas monitoring system design;

(21) changes to an existing landfill gas collection system design, unless the changes are made for the purpose of complying with other permits in which case the changes do not require prior approval under this section before implementation. Notification of changes made to a landfill gas collection system in order to comply with other permits shall be sent within 30 days to the executive director and the appropriate commission regional office;

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

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

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

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

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

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

(28) changes to post-closure use of a landfill in accordance with §330.255 of this title (relating to Post-Closure Land Use) during the post-closure care period unless the changes would potentially affect the adjacent property owners or community in which case notice in accordance with §39.106 of this title would be required;

(29) substitution of an equivalent financial assurance mechanism;

(30) changes to a closure or post-closure care cost estimate required under §330.281 or §330.283 of this title (relating to Closure for Landfills; and Post-Closure Care for Landfills) that result in an increase/decrease in the amount of financial assurance required if the increase/decrease in the cost

estimate is due to an increase/decrease in the maximum area requiring closure;

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

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

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

(k) Paragraphs (1) - (6) of this subsection are modifications which require notice. For those modifications requiring notice, the permittee or registrant must send notice of the modification application by first-class mail in accordance with §39.106 of this title and to all persons listed in §39.413 of this title:

(1) the use of an alternate daily cover material on a permanent basis in accordance with §330.133(c) of this title (relating to Landfill Cover);

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

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

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

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

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

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

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

(i) the entire facility will cease the receipt of solid waste within 365 days of the approval of the height increase (including the additional fill authorized by the height

increase) and initiate formal closure of the entire facility; or

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

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

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

(5) installation of a landfill gas collection system for a landfill gas remediation plan in accordance with §330.56(n) of this title (relating to Attachments to the Site Development Plan); and

(6) changes to a site layout plan that add or relocate a liquid waste solidification facility

or a petroleum-contaminated soil stabilization area.

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

(m) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be conducted, an explanation of why the authorization is necessary, and how long the authorization is needed. The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days, if circumstances warrant the extension. The executive director may provide verbal authorization for activities related to natural disasters as described in paragraph (3) of this subsection. The permittee or registrant shall document the request and the verbal approval in a letter to the executive director within three days. Temporary authorizations must otherwise be in accordance with subsections (d) and (e)(1) and (2) of this section (i.e., they must apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions; do not reduce the capability of the facility to protect human health and the environment; etc.). Examples of temporary authorizations include:

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

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

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

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

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