The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§305.1, 305.3, 305.50, 305.69, 305.150, 305.171, 305.172, 305.176, 305.401, 305.533, 305.572, and 305.650.

Background and Summary of the Factual Basis for the Proposed Rules

The federal hazardous waste program is authorized under the federal Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states. 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.

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984, and has continuously participated in EPA's authorization program. To maintain the 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 must adopt new regulations regularly to meet the changing federal regulations.

The commission proposes to adopt portions of the RCRA Rule Clusters XIII, XXIX, XXX,

and XXXI that implement revisions to the federal hazardous waste program promulgated by EPA on July 24, 2002, and between July 7, 2020, and March 20, 2023. The proposed rulemaking includes adoption of both mandatory and optional federal regulation changes within these clusters. Although adoption of the optional provisions is not required to maintain authorization, EPA recommends that states incorporate these provisions to ensure consistency with the federal program. In addition, the commission proposes revisions to correct typographical errors and incorporate inadvertently omitted rule language from previously adopted RCRA Rule Clusters that implemented EPA-requested revisions necessary to maintain authorization. Maintaining equivalency with federal regulations will enable Texas to continue operating all delegated aspects of the federal hazardous waste program in lieu of EPA.

Modernizing Ignitable Liquids Determinations

In the July 7, 2020, issue of the *Federal Register* (85 FR 40594), EPA finalized updates to modernize the flash point test methods in 40 CFR §261.21 by incorporating current American Society for Testing and Materials (ASTM) International standards. The federal updates also finalized the aqueous alcohol definition in 40 CFR §261.21(a)(1) by replacing the term “aqueous” with “at least 50 percent water by weight” and defining “alcohol.”

EPA also made technical corrections to update definitions and references for ignitable compressed gases and explosives, specifying ASTM Standard E681-85 as the approved test method for ignitable compressed gases, aligning definitions with current United

States Department of Transportation (DOT) regulations for flammable gases and aerosols, and revising cross-references to explosives to reflect DOT's Division 1.1, 1.2, and 1.3 classification system. In addition, EPA deleted outdated notes in §261.21 that referenced obsolete agencies, historical information, or superseded regulations.

Finally, EPA finalized alternatives to the use of mercury thermometers in SW-846 air sampling and stack emissions Methods 0010, 0011, 0020, 0023A, and 0051, without changing the underlying test technology or affecting precision or accuracy. To maintain equivalency with federal RCRA regulations, the commission proposes to incorporate these federal revisions by reference in 30 Texas Administrative Code (TAC) §305.150.

Financial Capability and Administrative Revisions

The commission proposes to amend Chapter 305 to revise the financial capability demonstration requirements, the number of paper copies required for permit applications, and outdated public participation procedures for Class 3 modifications. The proposed amendments clarify the financial capability criteria in conjunction with permit issuances, amendments, modifications, transfers, extensions, and renewals for hazardous waste management facilities.

A stakeholder meeting to collect informal comments was conducted on May 13, 2025, with a subsequent 30-day comment period. Comments received during this informal comment period were used to develop rule changes proposed in this rulemaking as

addressed in the *Section by Section Discussion* portion of this preamble. Instructions for submitting formal comments regarding rule changes proposed in this rulemaking can be found in the *Submittal of Comments* section of this preamble.

All proposed rule changes are discussed further in the *Section by Section Discussion* portion of this preamble.

As part of this rulemaking the commission is proposing revisions to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

Subchapter A: General Provisions

§305.1, Scope and Applicability

In §305.1(a), the commission proposes to replace the phrase "management of waste disposal activities" with "waste management activities." This change is proposed to provide a more accurate description and scope of Chapter 305. The chapter applies to a range of waste management activities and is not limited solely to waste disposal. The proposed revision to §305.1(a) clarifies that the chapter applies to all waste management activities regulated under this chapter.

§305.3, Abbreviations

In §305.3, the commission proposes to add the acronym "RCRA" (Resource

Conservation and Recovery Act) to the list of acronyms and abbreviations referenced in Chapter 305, as the acronym is already used elsewhere in the chapter, such as in §§305.51, 305.69, 305.122, and 305.650. The acronym would be added alphabetically as new paragraph (7), and existing paragraph (7) for TPDES will be renumbered as paragraph (8).

Subchapter C: Application for Permit or Post-Closure Order

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

In §305.50(a)(1) and §305.50(b)(7), the commission proposes to revise the requirement for the number of copies that must be submitted with a permit application. The number of copies of applications required will be addressed in the application form for a permit or post-closure order. The proposed revisions will reduce unnecessary costs associated with submitting duplicate copies that are no longer required by the commission. These changes are made possible by requiring a permit application to be submitted in an electronic format, which reduces the need for multiple physical copies. The proposed language implements recently adopted changes to application submittal requirements in §281.5(a) and §281.5(b) for hazardous or industrial solid waste permittees and post-closure order holders.

In §305.50(a)(4)(A), the proposed amendment would revise the *Federal Register* citation to replace “Federal Register” with “FR.” The abbreviation “FR” is the standard reference used for the *Federal Register.* This amendment would comply with rule drafting

standards and provide consistency across Industrial and Hazardous Waste (IHW) rules within Chapter 305.

In §305.50(a)(4)(B), the commission proposes to replace existing subparagraph (B) with new subparagraph (B). The proposed amendments would revise the financial information required to demonstrate financial capability. Under the Texas hazardous waste program, applicants for new, renewed, amended, or transferred hazardous waste permits are required to demonstrate financial capability. This is to ensure that applicants have sufficient financial resources to properly construct, safely operate, properly close, perform post-closure, and provide adequate liability coverage for the facility. While state law allows the use of financial assurance documents to satisfy this financial capability demonstration, this allowance is not currently reflected in commission rules. The federal regulations do not require facilities to demonstrate separate financial capabilities.

Currently, §305.50 requires some applicants to provide a financial capability demonstration while allowing others, such as post-closure care facilities, to provide a financial assurance mechanism as evidence of financial capability. As a result, there are two standards and additional burdens are placed on applicants seeking routine permit changes.

Proposed new §305.50(a)(4)(B) would allow permit applicants (other than those applying for a new facility) to submit a financial assurance mechanism to demonstrate

that their financial capability requirements are met. This would be consistent with other existing provisions under §305.50. These proposed changes are also intended to reduce duplicative requirements for new facility applicants and to facilitate a more streamlined process for permit transfers and renewals while ensuring financial protection.

New proposed §305.50(a)(4)(B)(i) would address the financial capability requirements for new facilities while §305.50(a)(4)(B)(ii) focuses on other routine permit actions, such as renewals and modifications, that would allow a financial assurance mechanism as evidence of financial capability.

In addition, the commission proposes to replace existing §305.50(a)(4)(C) with new §305.50(a)(4)(C). The existing language would be revised to state the specific regulation and law (30 TAC §1.5 and the Texas Public Information Act) applicable to confidentiality claims under §305.50(a)(4)(B).

Subchapter D: Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

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

The commission proposes to remove §305.69(d)(2) - (3), and (5) - (6), and renumber the remaining paragraphs. Legislation passed in 1999 revised public participation procedures for major applications including Class 3 permit modifications, and relocated public notice and meeting requirements to 30 TAC Chapter 39. Specifically,

public notice requirements for Class 3 permit modifications are addressed in §39.509. Because §305.69(d)(4) was not updated, the existing language is outdated, potentially confusing, and may result in applicants following improper procedures. The proposed revisions clarify the public notice and meeting requirements for Class 3 permit modifications and ensure consistency with 30 TAC Chapter 39.

In renumbered §305.69(d)(2), the commission proposes to clarify the timing of an applicant-held public meeting as no earlier than 15 days and not later than 45 days from the publication date of the Notice of Receipt of Application and Intent to Obtain Permit notification.

In renumbered §305.69(d)(3), the commission proposes to cite the location of notice requirements for Class 3 modifications in rule, 30 TAC §39.509, and remove the reference to applications declared administratively complete after September 1, 1999.

A comment received during the informal comment period observed that §305.69 does not specify when Class 2 and Class 3 permit modification applications and supporting documents must be made available for public review. The commenter expressed concern that in some instances, public notice has been published before the supporting documents were available for public inspection and recommended that the commission amend the rule to require applicants to make the application and supporting documents publicly accessible on or before the date that notice is published.

The commission reviewed both state and federal requirements for Class 2 and Class 3 permit modifications. Existing rules require the permittee to make the permit application and supporting documents available to the public on the day that notice is published and mailed. Because the state rules are already consistent with federal requirements, the commission is not proposing revisions in response to the comment. However, the commission has revised application instructions and provides guidance through the agency's website and applicant meetings to reinforce the requirement that supporting documents be available on or before the date of notice publication.

In §305.69(i)(1), the proposed amendment would revise the *Federal Register* citation to replace "Federal Register" with "FR." The abbreviation "FR" is the standard reference used for the *Federal Register.* This amendment would comply with rule drafting standards and provide consistency across IHW rules within Chapter 305.

The commission proposes to amend §305.69(k), Appendix I, Figure: 30 TAC §305.69(k) by removing items A(8), A(9), and A(10), which reference requirements in §305.149, and renumber the remaining items in subdivision A. Section 305.149 and the underlying statutory authority in Texas Health and Safety Code, §361.0232, which established time limitations for the construction of hazardous waste management units at a commercial hazardous waste management facility, have been repealed. Because items A(8), A(9), and A(10) incorporate requirements from a repealed rule and statutes, the commission proposes to remove them. This revision will ensure that,

Figure: 30 TAC §305.69(k) remains current, accurate, and consistent with existing statutory authority.

The commission proposes to further amend §305.69(k), Appendix I, Figure: 30 TAC §305.69(k) to add new items A(9) and A(10) due to revisions to federal regulations in 40 CFR §270.42 Appendix I. The new provisions address modification requirements to remove units from the permit or for facilities that will no longer be required to maintain a hazardous waste operating permit that are excluded under the 40 CFR §261.4 exclusions.

The commission proposes additional revisions to §305.69(k), Appendix I, Figure: 30 TAC §305.69(k) in items F(1)(c), F(4)(a), G(1)(e), G(5)(c), H(5)(c), and J(6)(c) to remove outdated references to the federal regulation §268.8(a)(2)(ii), which was repealed in the final rule published in the *Federal Register* on April 8, 1996 (61 FR 15566). Although EPA repealed §268.8, references to this rule currently remain in 40 CFR §270.42 and, for federal equivalency also in §305.69(k), Appendix I. The proposed revisions align with the approach taken by several other states by removing the obsolete federal citation while retaining the Land Disposal Restriction treatment standards. In addition, a reference to the state rule “Chapter 335, Subchapter O of this title” is added in place of the repealed federal regulation §268.8 to ensure clarity and regulatory consistency.

Subchapter G: Additional Conditions for Hazardous and Industrial Solid Waste Storage, Processing, or Disposal Permits

§305.150, Incorporation of References

The commission proposes to amend §305.150 to incorporate by reference revisions to federal regulations associated with EPA's *Modernizing Ignitable Liquids Determinations* rulemaking. This revision will ensure that the state rule remains equivalent to the federal regulation for RCRA authorization purposes. In addition, the amendment revises the *Federal Register* citation from "Federal Register" to "FR" to comply with rule drafting standards and provide consistency across IHW rules within Chapter 305. The abbreviation "FR" is the standard reference used for the *Federal Register*.

Subchapter I: Hazardous Waste Incinerator Permits

§305.171, Determining Operational Readiness

The commission proposes to amend §305.171(1) to correct a typographical error in the federal regulation citation from "§284.343" to "§264.343," ensuring that the rule is current and accurate.

In addition, the abbreviation "CFR" will be placed after the first occurrence of "Code of Federal Regulations" and used thereafter in place of the full phrase for brevity. This revision is consistent with usage throughout Chapter 305 and improves consistency across the rules.

§305.172, Determining Feasibility of Compliance and Adequate Operating Conditions

The commission proposes to amend the *Federal Register* citation in §305.172(6) from "FedReg" to "FR" to maintain consistency across IHW rules within Chapter 305. The

abbreviation “FR” is the standard reference used for the *Federal Register*.

§305.176, Integration with Maximum Achievable Control Technology (MACT) Standards

The commission proposes to amend the *Federal Register* citation in §305.176 from “FedReg” to “FR” to maintain consistency across IHW rules within Chapter 305. The abbreviation “FR” is the standard reference used for the *Federal Register*.

Subchapter L: Groundwater Compliance Plan

§305.401, Compliance Plan

The commission proposes to amend §305.401(b) to add alternative notice language requirements in §39.426 to the list of rules applicable to submitted applications, notices, and hearings. This amendment clarifies that alternative language notices are required during the development of these applications and shall apply in proceedings to establish the plan.

Subchapter O: Additional Conditions and Procedures for Wastewater Discharge Permits and Sewage Sludge Permits

§305.533, Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs

The commission proposes to amend §305.533 to replace the abbreviation for the predecessor agency name, the Texas Natural Resource Conservation Commission (TNRCC), with the abbreviation for the current agency name, the Texas Commission on

Environmental Quality (TCEQ). This revision ensures that the rule's language is current and accurate.

Subchapter Q: Permits for Boilers and Industrial Furnaces Burning Hazardous Waste

§305.572, Permit and Trial Burn Requirements

The commission proposes to amend the *Federal Register* citation in §305.572(a) from "FedReg" to "FR" to maintain consistency across IHW rules within Chapter 305. The abbreviation "FR" is the standard reference used for the *Federal Register*.

Subchapter R: Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units

§305.650, General

The commission proposes to amend §305.650 to incorporate a change to federal regulations by amending the citation to 40 CFR Part 124, Subparts G and J and removing the phrase "concerning Procedures for Decision Making," the title of 40 CFR Part 124. EPA moved Subpart J from Part 124 to Part 270 in a separate rulemaking. This revision ensures federal regulation equivalency and maintains citation accuracy.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are

anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with current state and federal regulatory requirements. Additionally, other clarifications, minor corrections, and nonsubstantive changes are proposed that would increase the understanding of applicable requirements for regulated entities and the public.

While changes proposed in §305.50(a)(4)(B) would reduce administrative requirements and associated costs for hazardous waste management facilities, the proposed rulemaking is not anticipated to result in significant fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed

rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The

proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it would not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed rulemaking would incorporate changes to federal RCRA regulations (specifically Clusters XIII, XXIX, XXX, and XXXI) and would implement program-initiated revisions to Chapters 305 and 335, including financial capability demonstration rules,

programmatic updates, and the repeal of obsolete rules. The proposed rulemaking is administrative, technical, and procedural in nature. While the hazardous waste program generally protects the environment, these specific revisions are intended to maintain state program authorization, provide regulatory flexibility, and streamline the financial capability demonstration process. The proposed changes would not impose new substantial costs; rather, they would align state rules with federal standards and improve agency efficiency. Therefore, these proposed changes are not specifically intended to protect the environment or reduce risks to human health in a way that would 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.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rulemaking would not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but would be authorized by specific sections of the Texas Water Code and Texas Health and Safety Code that are cited in the Statutory Authority section of this preamble. Therefore, this proposed

rulemaking would not be subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis during the public comment period. Written comments on the Draft Regulatory Impact Analysis 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 proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking would incorporate federal RCRA updates and would streamline state administrative procedures, such as financial capability demonstrations and permit application processes. The proposed rulemaking would not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, this rulemaking action would not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking would not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this proposed rulemaking action would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a

rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

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

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

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on September 22, 2026 at 10:00 am in Building E, Conference Room E201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at

9:30 am.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by September 18, 2026. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on September 21, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:
https://events.teams.microsoft.com/event/53edb30d-abc0-4b50-8f31-c42454893872@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Vanessa Onyskow-Lang, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin,

Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2026-011-335-WS. The comment period closes at 11:59 pm on September 29, 2026. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

SUBCHAPTER A: GENERAL PROVISIONS

§305.1, §305.3

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements THSC, Chapter 361.

§305.1. Scope and Applicability.

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for waste management activities [management of waste disposal activities] under

Texas Water Code, Chapters 26 - 28 and 32, and Texas Health and Safety Code, Chapters 361 and 401.

(b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system (TPDES). The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in Texas Water Code, §26.001.

(1) The following are point sources requiring TPDES permits for discharges:

(A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations (CFR) §122.24;

(C) discharges into aquaculture projects as set forth in 40 CFR §122.25;

(D) discharges from separate storm sewers as set forth in 40 CFR §122.26; and

(E) silvicultural point sources as defined in 40 CFR §122.27.

(2) The TPDES permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of Subtitle C, the Federal Solid Waste Disposal Act, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with CWA, §405.

(3) The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

§305.3. Abbreviations.

The following abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) CFR--Code of Federal Regulations.

(2) CWA--Clean Water Act.

(3) DMR--Discharge monitoring report.

(4) EPA--United States Environmental Protection Agency.

(5) NPDES--National pollutant discharge elimination system.

(6) POTW--Publicly owned treatment works.

(7) RCRA--Resource Conservation and Recovery Act.

(8) [(7)] TPDES--Texas pollutant discharge elimination system.

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§305.50

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements THSC, Chapter 361.

§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) A complete permit application form(s) and exhibit(s), signed and notarized, and appropriate copies provided including an accurate duplicate of the application in electronic format [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 though July 14, 2006 (71 FR 40254) [(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) Financial capability review for a hazardous waste management facility.

(i) An application for a permit for a new hazardous waste management facility must contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate and close the facility in compliance with the permit and all applicable rules as well as how an applicant intends to obtain financing for construction of the facility. Financial information submitted must comply with the following requirements:

(I) For publicly traded entities, submit:

(-a-) a copy of the most recent Securities and Exchange Commission Form 10-K;

(-b-) a copy of the most recent Securities and Exchange Commission Form 10-Q; and

(-c-) a statement signed by an authorized signatory explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, and properly close the facility.

(II) For privately held entities with audited financial statements for the most recent fiscal year, submit:

(-a-) a complete copy of the audited financial statements for the most recent fiscal year. The financial statements must be prepared consistent 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;

(-b-) a complete copy of the most current quarterly financial statement;

(-c-) written statement detailing the information that would normally be found in Securities and Exchange Commission's Form 10-K including descriptions of the business and its operations; identification of any affiliated relationships; credit agreements and terms; any legal proceedings involving the applicant; contingent liabilities; and significant accounting policies; and

(-d-) a statement signed by an authorized signatory explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate and properly close the facility.

(III) For privately held entities without an audited financial statement for the most recent fiscal year, or entities choosing not to provide the information required in subclause (I), (II), or (IV) of this clause, submit:

(-a-) a statement signed by an authorized signatory explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, and properly close the facility;

(-b-) an opinion letter from an executive officer of the applicant or from a financial expert, not otherwise employed by the applicant. The opinion letter must certify that the financial information provided is reasonable; and

(-c-) a written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first year 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 assumptions made to forecast cash flow must be provided; or

(-d-) a parent guarantee provided by a direct or higher tier parent entity accompanied by the information as required under subclause (I) or (II) of this clause as applied to the parent entity; or

(IV) For government owned entities, other than federal or state entities, submit:

(-a-) a statement signed by an authorized signatory explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, and properly close the facility; and

(-b-) a bond rating of most recent issuance or audited financial statement from the most recent fiscal year.

(ii) An application to renew, modify, amend, or transfer a permit for an existing hazardous waste management facility or an application for a hazardous waste permit that only authorizes corrective action or post-closure must demonstrate that the applicant has sufficient financial resources to operate and close the facility in compliance with the permit and all applicable rules by the execution and maintenance of a financial assurance mechanism when required by §37.31 of this title (relating to Submission of Documents) in accordance with the permit, §335.7 of this title (relating to Financial Assurance Required), §331.142 (relating to Financial Assurance), Chapter 37, Subchapter P, of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), or Chapter 37, Subchapter Q (relating to Financial Assurance for Underground Injection Control Wells). An application making the demonstration under this clause must include sufficient information to demonstrate that continuous financial assurance for closure, post closure, or corrective action is provided under §37.111 of this title (relating to Continuous Financial Assurance Required). If no acceptable financial assurance has been executed and maintained for closure, post closure or corrective action, the

application must include the financial information under clause (i) of this subparagraph.

(C) Information submitted under subparagraph (B) claimed as confidential must comply with §1.5 of this title (relating to Records of the Agency) and is subject to the requirements of the Texas Public Information Act. During hearings on contested applications, the commission may allow disclosure of confidential information only under an appropriate protective order.

[(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 and close the facility in a safe manner in compliance with the permit and all applicable rules as well as how an applicant intends to obtain financing for construction of the facility. Financial information necessary to satisfy this subparagraph shall be as follows:]

[(i) For publicly traded entities:]

[(I) copies of the most recent two Securities and Exchange Commission Form 10-Ks;]

[(II) a copy of the Securities and Exchange Commission Form 10-Q for the most recent quarter;]

[(III) a statement signed by an authorized signatory consistent 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 consistent with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities); and]

[(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; or]

[(ii) For privately held entities with audited financial statements for either of the most recent two fiscal years:]

[(I) complete copies of the audited financial statements for each of the most recent two fiscal years if audits have been performed in each year. If an audit has not been completed for one of the previous two years, a

complete copy of the fiscal year end financial statement and federal tax return may be substituted in lieu of the audit not performed. The tax return must be certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service." Financial statements shall be prepared consistent with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statement, and accountant's opinion letter;]

[(II) a complete copy of the most current quarterly financial statement prepared consistent with generally accepted accounting principles;]

[(III) a written statement detailing the information that would normally be found in Securities and Exchange Commission's Form 10-K including descriptions of the business and its operations; identification of any affiliated relationships; credit agreements and terms; any legal proceedings involving the applicant; contingent liabilities; and significant accounting policies;]

[(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; and]

[(V) a statement signed by an authorized signatory consistent 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; or]

[(iii) For privately held entities without audited financial statements for either of the two most recent fiscal years, or entities choosing not to provide the information provided in clauses (i), (ii), or (iv) of this subparagraph:]

[(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;]

[(II) a 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;]

[(III) a statement addressing 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; and]

[(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; or]

[(iv) 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 this subparagraph:]

[(I) a statement signed by an authorized signatory consistent 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 consistent with Chapter 37, Subchapter P of this title;]

[(II) a certified copy of the resolution; and]

[(III) certification by the governing body of passage of the resolution.]

[(C) If any of the information required to be disclosed under subparagraph (B) 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.]

(D) 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 United States Environmental Protection Agency, 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.

(E) 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, 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 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)(D)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(1)(B)(iii) and (4)(A) 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) For a post-closure permit or post-closure order, a complete application form(s) and exhibit(s), signed and notarized, and appropriate copies provided, including an accurate duplicate of the application in electronic format, shall be submitted on forms provided by or approved by the executive director [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 PERMITS

§305.69

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements THSC, Chapter 361.

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

(a) Applicability. This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are

covered in §305.70 of this title (relating to Municipal Solid Waste Permit and Registration 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 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 §39.413 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, 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 and §§305.41 - 305.45 and 305.47 - 305.53 of this title;

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.413 of this title 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 §50.133 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 §50.133 of this title, 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 §39.413 of this title, 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) 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.

(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, 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 and §§305.41 - 305.45 and 305.47 - 305.53 of this title; 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 §39.413 of this title 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 §39.411 of this title (relating to Text of Public 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.]

(2) [(4)] The permittee must hold a [public] meeting no earlier than 15 days and no later than 45 days from the publication date of Notice of Receipt of Application and Intent to Obtain Permit. [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.]

(3) [(7)] The notice requirements for Class 3 modification applications for industrial or hazardous waste facility permits are included in 30 TAC §39.509 (relating to Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit). [Except as otherwise required by Chapter 39 of this title, the notice requirements in this section do not apply to Class 3 modification applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.]

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of subsection (k) of this section, 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 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 §39.413 of this title. 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 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 §39.413 of this title 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, 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.

(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 FR 59402) [(70 Federal Register 59402)], 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 regardless of 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.....1
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.....1
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.....1
[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]
8. [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).....1
9. Changes to remove permit conditions applicable to a unit excluded under the provisions of 40 CFR §261.4 and as incorporated in Chapter 335.....1
10. Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of 40 CFR §261.4 and as incorporated in Chapter 335.....1
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.....1
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.....1
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.....1_1
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_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(8) 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(13) 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(11)(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_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.....1_1
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director.....1_1
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director.....1_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.....1_1
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 as incorporated by reference in Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions) [, 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[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 as incorporated by reference in Chapter 335, Subchapter O of this title [, 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).....1[1]
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[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 as incorporated by reference in Chapter 335, Subchapter O of this title [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).....1[1]
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 as incorporated by reference in Chapter 335, Subchapter O of this title [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[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 as incorporated by reference in Chapter 335, Subchapter O of this title [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).....1
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 as incorporated by reference in Chapter 335, Subchapter O of this title [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.....1[1]
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 soilpore 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.....1[1]
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[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[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.....1[1]
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[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.....1[1]
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.....1[1]
M. Corrective Action
1. Approval of a corrective action management unit pursuant to 40 CFR §264.552.....3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 CFR §264.553.....2
3. Approval of a staging pile or staging pile operating term extension pursuant to 40 CFR §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

§305.150

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements THSC, Chapter 361.

§305.150. Incorporation of References.

When used in this chapter, the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended through July 7, 2020 (85 FR 40608) [October 12, 2005 (70 Federal Register 59402)].

SUBCHAPTER I: HAZARDOUS WASTE INCINERATOR PERMITS

§305.171, §305.172, §305.176

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements THSC, Chapter 361.

§305.171. Determining Operational Readiness.

For the purposes of determining operational readiness following completion of physical construction of a hazardous waste incinerator, the commission shall establish permit conditions including, but not limited to, specification of allowable waste feeds and operating conditions, in a permit for a new hazardous waste incinerator. These

permit conditions will be effective for a minimum required time, not to exceed 720 hours operating time for treatment of hazardous waste, to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn. The commission may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension pursuant to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(1) Applicant must submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 [§284.343] during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in 40 CFR [Code of Federal Regulations] §264.345.

(2) The executive director shall review this statement and any other relevant information submitted with Part B of the permit application and shall specify requirements for this period sufficient to meet the performance standards of 40 CFR [Code of Federal Regulations] §264.343, based on the executive director's engineering judgment.

§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 40 CFR 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; and

(iv) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods;

(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 §39.413 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 §270.62(b)(6)(i) - (ii), as amended through December 11, 1995, at 60 FR 63417 [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 (O_2) 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 §50.133 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) or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

§305.176. Integration with Maximum Achievable Control Technology (MACT) Standards.

The regulations contained in 40 Code of Federal Regulations §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, are adopted by reference, as amended and adopted through October 12, 2005 (70 FR 59402 [70 FedReg 59402]).

SUBCHAPTER L: GROUNDWATER COMPLIANCE PLAN

§305.401

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements THSC, Chapter 361.

§305.401. Compliance Plan.

(a) In order to administer the groundwater protection requirements relating to compliance monitoring and corrective action for facilities that store, process, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills, and the requirements of §335.167 of this title (relating to Corrective

Action for Solid Waste Management Units), the commission shall establish a compliance plan.

(b) The following rules pertaining to application, and notice and hearing shall be applicable in proceedings to establish the plan: §39.401 of this title (relating to Purpose); §39.403 of this title (relating to Applicability); §39.405 of this title (relating to General Notice Provisions); §39.407 of this title (relating to Mailing Lists); §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing); §39.411 of this title (relating to Text of Public Notice); §39.413 of this title (relating to Mailed Notice); §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit); §39.419 of this title (relating to Notice of Application and Preliminary Decision); §39.420 of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision); §39.421 of this title (relating to Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application); §39.423 of this title (relating to Notice of Contested Case Hearing); §39.425 of this title (relating to Notice of Contested Enforcement Case Hearing); §39.426 of this title (relating to Alternative Language Requirements); §39.503 of this title (relating to Application for Industrial or Hazardous Waste Facility Permit); §39.509 of this title (relating to Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit); §39.1005 of this title (relating to Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit); §39.1007 of this title (relating to Notice of Class 2 Modification of an Industrial Solid Waste or

Hazardous Waste Permit); §50.113 of this title (relating to Applicability and Action on Application); §50.115 of this title (relating to Scope of Contested Case Hearings); §50.117 of this title (relating to Commission Actions); §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing); §55.200 of this title (relating to Applicability); §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing); §55.203 of this title (relating to Determination of Affected Person); §55.205 of this title (relating to Request by Group or Association); §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing); §55.210 of this title (relating to Direct Referrals); §55.211 of this title (relating to Commission Action on Requests for Reconsideration and Contested Case Hearing); Chapter 281 of this title (relating to Applications Processing); §305.43 of this title (relating to Who Applies); §305.44 of this title (relating to Signatories to Applications); §305.47 of this title (relating to Retention of Application Data); §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); §305.53 of this title (relating to Application Fee); §§305.122 - 305.124 of this title (relating to Characteristics of Permits; Reservation in Granting Permit; and Acceptance of Permit, Effect); and §305.128 of this title (relating to Signatories to Reports).

(c) Any investigation report to establish compliance monitoring or corrective action shall contain the information specified in the regulations contained in 40 Code of Federal Regulation (CFR) §270.14(c)(7) and (8), which are in effect as of September 9, 1987. The executive director may authorize, in writing, in advance the submittal of a

proposed permit schedule for the submittal of an engineering feasibility plan as set forth in the regulations contained in 40 CFR §270.14(c)(7), which are in effect as of September 9, 1987. The executive director may also authorize, in writing, prior to the submittal of a complete permit application, the submittal of a schedule for the information required in the regulations contained in 40 CFR §270.14(c)(8)(iii) and (iv), as set forth in the regulations contained in 40 CFR §270.14(c)(8)(v), which are in effect as of September 9, 1987. The executive director may request information necessary to determine the appropriateness and extent of corrective action required by §335.167 of this title.

(d) The executive director shall prepare a draft compliance plan unless the executive director recommends not to approve the plan. The draft compliance plan shall be available for public review, and notice that the executive director has prepared such a plan will be given pursuant to §39.503 of this title . The draft compliance plan shall be filed with the commission to be included in its consideration of the approval of a compliance plan.

(e) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft compliance plan. The executive director shall send this summary together with the draft compliance plan to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft compliance plan;

(2) the type and quantity of wastes, fluids, or pollutants which are being managed at the facility;

(3) a brief summary of the basis for the conditions of the draft compliance plan, including references to applicable statutory or regulatory provisions;

(4) a description of the procedures for reaching a final decision on the draft compliance plan, including procedures whereby the public may participate in the final decision; and

(5) the name and telephone number of a person in the commission to contact for additional information.

(f) The plan may be amended:

(1) when the corrective action program specified in the plan under §335.165 of this title (relating to Compliance Monitoring Program) has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable time;

(2) when the plan requires a compliance monitoring program under §335.165 of this title, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard. The sections of this chapter pertaining to major amendments shall be applicable to the foregoing amendments to the compliance plan.

(g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §§335.156 - 335.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; and Corrective Action Program) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the compliance plan shall be consolidated in one proceeding.

(h) Nothing herein shall be construed to be inconsistent with the commission's authority under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §8 and §8b.

SUBCHAPTER O: ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

§305.533

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements THSC, Chapter 361.

§305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs.

On the date of TCEQ [TNRCC] assumption of the administration of the Texas Pollutant Discharge Elimination System (TPDES) permit program, after the

Environmental Protection Agency (EPA) approves the TPDES permit program, and the issuance of national pollutant discharge elimination system (NPDES) permits is delegated from the EPA to the state, the state adopts all EPA permits and pretreatment programs, except that EPA shall retain jurisdiction over certain EPA-issued or proposed permits until their expiration which it has issued as may be specified in a state/federal Memorandum of Agreement. This provision does not affect the right of the EPA to issue NPDES permits for facilities which expired in the 12 months preceding the date of program assumption or to modify NPDES permits under Clean Water Act, §304(l). If the requirements of a state permit and an EPA permit issued to the same permittee or for the same facility are not of equal stringency, any requirements of the state-issued permit that are more stringent shall apply above and beyond those requirements contained in the corresponding EPA permit.

SUBCHAPTER Q: PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

§305.572

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements THSC, Chapter 361.

§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 FR 44150 [70 FedReg 44150]) or as stated in paragraphs (1) - (5) of this subsection:

(1) 40 CFR §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) 40 CFR §270.66(c) - Requirements for Trial Burn Plans;

(3) 40 CFR §270.66(d) - Trial Burn Procedures, except 40 CFR §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) 40 CFR §270.66(e) - Special Procedures for DRE Trial Burns; and

(5) 40 CFR §270.66(f) - Determinations Based on Trial Burn.

(6) 40 CFR §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 FR 59402 [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 §39.413 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) and (ii) as amended through December 11, 1995 (60 FR 63417 [60 FedReg 63417]). The applicant may not commence the trial burn until after the chief clerk has issued such notice. This subsection 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

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the authority to carry out its duties and general powers; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, regarding records and manifests; THSC, §361.061 and §361.082, authorizing the issuance of permits for solid and hazardous waste facilities; THSC, §361.078, relating to the maintenance of state program authorization under federal law; THSC, §361.085, relating to financial assurance and disclosure by permit applicants; and THSC, §361.119, which authorizes the regulation of industrial solid waste and hazardous waste.

The proposed rulemaking implements 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 40 CFR Part 270, Subpart J, [concerning Procedures for Decision Making,] and this subchapter.