

US EPA ARCHIVE DOCUMENT

SUBCHAPTER C: APPLICATION FOR PERMIT

§§305.41 - 305.45, 305.47 - 305.54

Effective December 16, 2001

§305.41. Applicability.

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under Texas Water Code Chapters 26, 27 and 28, and Texas Health and Safety Code Chapters 361 and 401.

Adopted May 14, 1997

Effective June 5, 1997

§305.42. Application Required.

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

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and Texas Health and Safety Code, §361.082(e) shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under Texas Health and Safety Code, Chapter 361, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 et seq., that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 Code of Federal Regulations, §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

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

(d) For applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or

operator is subject to the requirements for updating the Part A application under 40 Code of Federal Regulations §270.10(g), as amended and adopted in the Code of Federal Regulations through June 29, 1995, (see 60 FedReg 33911).

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

Adopted November 20, 2001

Effective December 16, 2001

§305.43. Who Applies.

(a) It is the duty of the owner of a facility to submit an application for a permit; however, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit, and for all Texas pollutant discharge elimination system (TPDES) permits, it is the duty of the operator and the owner to submit an application for a permit.

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

Effective October 8, 1990

§305.44. Signatories to Applications.

(a) All applications shall be signed as follows:

(1) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this paragraph, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(2) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or a ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the

agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g. regional administrator of the United States Environmental Protection Agency).

(b) A person signing an application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) For hazardous solid waste permit applications, the owner and operator of a facility must sign the application.

(d) For radioactive material license applications under Chapter 336 of this title (relating to Radioactive Substance Rules), the applicant or person duly authorized to act for and on the applicant's behalf must sign the application.

Adopted May 14, 1997

Effective June 5, 1997

§305.45. Contents of Application for Permit.

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

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

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

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

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

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

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

the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

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

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

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

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

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

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

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

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

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

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

(E) Nonattainment Program under the Federal Clean Air Act;

(F) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the Clear Air Act;

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

- (H) dredge or fill permits under of the Federal Clean Water Act;
- (I) licenses under the Texas Radiation Control Act; and
- (J) other environmental permits;

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

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

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

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

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

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

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

Adopted August 23, 2000

Effective September 14, 2000

§305.47. Retention of Application Data.

A permittee shall keep records throughout the term of the permit of data used to complete the final application and any supplemental information.

Effective June 19, 1986

§305.48. Additional Contents of Applications for Wastewater Discharge Permits.

(a) The following shall be included in an application for a wastewater discharge permit.

(1) The original and one copy 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 copies of all technical supplements and attachments.

(2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information. This subsection does not apply to:

(A) an application to renew a permit; and

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including but not limited to the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands;

(C) up to four standard industrial codes (SIC) which best reflect the principal products or services provided by the facility.

(b) The following regulations contained in 40 Code of Federal Regulations Part 122, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference:

(1) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers;

(2) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only non-process wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits);

(3) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

Adopted May 26, 1999

Effective June 17, 1999

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following shall be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.122 of this title (relating to Class III wells);

(3) the manner in which compliance with the financial assurance requirements of Chapter 37 of this title (relating to Financial Assurance) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Plugging and Abandonment Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

(6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in the Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

(1) mine plan;

(2) a restoration table;

(3) a baseline water quality table;

(4) control parameter upper limits;

(5) monitor well locations; and

(6) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(4)(B) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

Adopted February 24, 2000

Effective March 21, 2000

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit.

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

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

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided shall 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 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 Texas Solid Waste Disposal Act, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be 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, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information submitted to satisfy this subparagraph shall meet the requirements of subparagraph (C) or (D) of this paragraph.

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

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide

adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);

(ii) a certified copy of the resolution; and

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

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

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

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

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

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

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

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

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

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

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

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

- (I) descriptions of the business and its operations;
- (II) identification of any affiliated relationships;
- (III) credit agreements and terms;
- (IV) any legal proceedings involving the applicant;
- (V) contingent liabilities; and
- (VI) significant accounting policies;

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

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

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

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

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

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

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

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

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

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

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment which is filed after January 1, 1986, which is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report 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 registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

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

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

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

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

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

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

(A) copies of any relevant land use plans, adopted in accordance with the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

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

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

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

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

(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 Natural Resource Conservation Commission, Texas Parks and Wildlife, General Land Office, Texas Department of Health, and Texas Railroad Commission);

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

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

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

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

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

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

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

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

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

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

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

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

Adopted October 24, 2001

Effective November 18, 2001

§305.51. Revision of Applications for Hazardous Waste Permits.

(a) Owners or operators of hazardous waste management facilities, who qualify for interim status pursuant to 40 Code of Federal Regulation Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and who filed a Part A permit application

pursuant to 40 Code of Federal Regulations §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:

- (1) new hazardous wastes not identified in the original application are stored, processed or disposed of at the facility;
- (2) increases in the design capacity of processes used at the facility occur;
- (3) changes in the processes for management of the waste occur or additional processes are added;
- (4) changes in the ownership or operational control of a facility are made; or
- (5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 Code of Federal Regulations §270.72. For changes in the ownership or operational control of a facility, the new owner or operator shall submit a revised Part A permit application no later than 90 days prior to the scheduled change and shall also comply with the requirements set forth in 40 Code of Federal Regulations §270.72(d). A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

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- (1) changes made solely for the purposes of complying with the requirements of 40 Code of Federal Regulations (CFR) §265.193 for tanks and ancillary equipment;
 - (2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of §3004(o) of the Resource Conservation and Recovery Act (RCRA), as amended;
 - (3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under §3008(h) of the RCRA, as amended, or other federal authority, by an authorized State under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized State, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 40 CFR, Part 268 or by §3004 of the RCRA, provided that such changes are made solely for the purpose of complying with 40 CFR, Part 268 or §3004 of the RCRA, as amended;

(7) addition of newly regulated units under subsection (a)(5) of this section; and

(8) changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

Adopted November 10, 1999

Effective December 5, 1999

§305.52. Waste Containing Radioactive Materials.

An application which involves the disposal of a waste containing radioactive materials shall be accompanied by a letter or other instrument in writing from the commission, the Texas Department of Health, or any other appropriate authority stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the commission, the Texas Department of Health, or any other appropriate authority governing waste containing radioactive materials; or that the applicant or the person served by the applicant does not need such a license. This section does not apply to applications under Chapter 336 of this title (relating to Radioactive Substance Rules).

Adopted May 14, 1997

Effective June 5, 1997

§305.53. Application Fee.

(a) Except for radioactive material licenses or as specifically provided hereunder, an applicant shall include with each application a fee of \$100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is \$100. The fee for each disposal well which will be authorized to receive hazardous waste is \$2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than \$2,000 and not more than \$50,000 as calculated in accordance with the following:

(A) site evaluation - \$100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;

(B) process analysis - \$1,000;

(C) facility unit(s) analysis - \$500 per unit;

(D) management/facility analysis - \$500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the \$500 per unit fee; except that multiple storage tanks or container storage area identical in type and use will be subject to a single \$500 unit fee.

(4) The permit application fee for water use permits shall be submitted in accordance with §§295.131 - 295.140 of this title (related to Water Use Permit Fees).

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (related to Procedures for Applications).

(6) The permit application fees for wastewater disposal permits shall not be less than \$100 and not more than \$2,000 as follows.

(A) Agricultural permit applications fees are as follows:

(i) minor amendments - \$100; and

(ii) new, amendment, and renewal applications - \$300.

(B) Domestic wastewater permit application fees are based upon the following flow categories:

(i) minor amendments - \$100;

(ii) new, amendment, and renewal applications less than 50,000 gallons per day - \$300;

(iii) new, amendment, and renewal applications 50,000 to less than 100,000 gallons per day - \$500;

(iv) new, amendment, and renewal applications 100,000 to less than 250,000 gallons per day - \$800;

(v) new, amendment, and renewal applications 250,000 to less than 500,000 gallons per day - \$1,200;

(vi) new, amendment, and renewal applications 500,000 to less than 1 million gallons per day - \$1,600; and

(vii) new, amendment, and renewal applications 1 million and greater gallons per day - \$2,000.

(C) Municipal storm water permit application fees as follows:

(i) minor amendments - \$100; and

(ii) new, major amendments, and renewal applications - \$2,000.

(D) Industrial wastewater permit application fees are based upon the EPA major/minor designation and the commission assigned toxicity rating as follows:

(i) minor amendments for minor facilities - \$100;

(ii) minor amendments for major facilities - \$400;

(iii) new, amendment, and renewal applications for minor facilities that are not subject to categorical standards promulgated by EPA (40 Code of Federal Regulations, Part 400) - \$300;

(iv) new, amendment, and renewal applications for minor facilities that must comply with a categorical standard promulgated by the EPA (40 Code of Federal Regulations, Part 400) - \$1,200; and

(v) new, amendment, and renewal applications for major facilities - \$2,000.

(7) The fees established by this section are due at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Natural Resource Conservation Commission for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees pursuant to paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of \$50 to be applied toward the cost of providing required notice. A fee of \$15 is required with each application for renewal. This subsection does not apply to radioactive material licenses.

(c) Each application for a radioactive material license shall be accompanied by the applicable fee. The fee for a license shall be calculated in accordance with Chapter 336, Subchapter B of this title (relating to Radioactive Substance Fees).

Adopted November 20, 2001

Effective December 16, 2001

§305.54. Additional Requirements for Radioactive Material Licenses.

(a) An applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the executive director. References shall be specifically stated, and shall incorporate accurate, legible, and up-to-date information.

(b) If the applicant is a corporation under the Texas Business Corporation Act, written verification (either affidavit or tax receipt) shall be submitted with the application to confirm that no tax owed the state under Chapter 171, Tax Code, is delinquent.

(c) An application shall include information on ownership of the land on which the proposed project will be located, ownership of the proposed facilities, buildings, structures, and equipment, and ownership of properties adjacent to the proposed site.

(d) An application for a license may include a request for a license authorizing one or more activities provided the application specifies the additional activities for which licenses are requested and complies with commission rules as to applications for those licenses. The commission may require the issuance of separate specific licenses for those activities.

(e) The commission or executive director may at any time after the filing of the original application, and before the expiration of the license, require further statements or data to enable the commission to determine whether the application should be granted or denied or whether a license should be amended, renewed, or revoked.

(f) Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of low-level radioactive waste.

Adopted August 23, 2000

Effective September 14, 2000

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

§§305.61 - 305.72

Effective December 30, 2001

§305.61. Applicability.

The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of permits.

Effective October 29, 1990

§305.62. Amendment.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

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

(c) Types of amendments.

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

- received;
- (A) authorizes a change in the type or concentration limits of wastes to be received;
- license;
- (B) authorizes receipt of wastes from other states not authorized in the existing license;
- (C) authorizes a change in the operator of the facility;
- (D) authorizes closure and the final closure plan for the disposal site;
- (E) transfers the license to the custodial agency; or
- (F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

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

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

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

- (A) correct typographical errors;
- (B) require more frequent monitoring or reporting by the permittee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adopted August 23, 2000

Effective September 14, 2000

§305.63. Renewal.

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

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

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

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

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

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

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by § 305.65 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendment) provided the requirements of § 305.62(f) of this title (relating to Amendment) and § 305.96 of this title (relating to Action on Application for Amendment) are satisfied.

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

(b) This section does not apply to applications for renewal of radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

Adopted September 2, 1999

Effective September 23, 1999

§305.64. Transfer of Permits.

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

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

(1) the name and address of the transferee;

(2) date of proposed transfer;

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

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

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

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

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

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

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

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

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

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

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

- (1) the permittee no longer owns the permitted facilities;
- (2) the permittee is about to abandon or cease operation of the facilities;
- (3) the permittee has abandoned or ceased operating the facilities; and
- (4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

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

- (1) the permittee no longer owns or controls the permitted facilities;
- (2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;
- (3) the permittee has failed or is failing to comply with the terms and conditions of the permit;
- (4) the permitted facilities have been or are about to be abandoned;
- (5) the permittee has violated commission rules or orders;
- (6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;
- (7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or
- (8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state and/or would minimize the damage to the environment; and

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

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

Adopted February 24, 2000

Effective March 21, 2000

§305.65. Renewal.

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

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

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

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

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

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

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §50.145 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendment) provided the requirements of §305.62(f) of this title and §305.96 of this title (relating to Action on Application for Amendment) are satisfied.

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

(8) After complying with all applicable rules in Chapters 39, 50 and 55 of this title, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

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

(i) was generated on-site; and

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

(B) processing of hazardous waste if:

(i) the waste was generated on-site;

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

(iii) the processing does not include thermal processing.

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

Adopted August 23, 2000

Effective September 14, 2000

~~§305.66. Permit Denial, Suspension, and Revocation.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If the executive director or an affected person intends to file a petition to revoke or suspend a permit, notice of the intention and a copy of the petition to be filed shall be personally served on or sent by registered or certified mail to the permittee at the last address of record with the commission. This notice shall be given at least 15 days before a petition for revocation or suspension is submitted to the executive director or filed with the commission for further proceedings. Failure to provide such

notice shall not be jurisdictional. For radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules), only the executive director may file a petition to revoke or suspend a license.

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

- (1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;
- (2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated or controlled by the applicant;
- (3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;
- (4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by a rule of the commission;
- (5) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

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

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

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

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

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

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

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

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

Adopted May 14, 1997

Effective June 5, 1997

§305.67. Revocation and Suspension upon Request or Consent.

(a) If a permittee no longer desires to continue a waste disposal activity or to dispose of waste under a permit, or is agreeable to a suspension of authorization to do so for a specified period of time, the permittee should file with the executive director a written request, or a written consent and waiver not later than 10 days following receipt of notice of the intention to file a petition under §305.66 of this title (relating to Revocation and Suspension).

(b) If a permittee requests or consents to the revocation or suspension of the permit, the executive director may revoke or suspend the permit without the necessity of a public hearing or commission action. The executive director shall notify the commission of each such revocation or suspension.

(c) Upon request of the applicant, the executive director may terminate a radioactive material license in accordance with this section, if the licensee has complied with the applicable decommissioning requirements under Chapter 336 of this title (relating to Radioactive Substance Rules).

Adopted August 23, 2000

Effective September 14, 2000

§305.68. Action and Notice on Petition for Revocation or Suspension.

(a) In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission, notice of which shall be given to the permittee not less than 30 days prior to the hearing by certified mail, return receipt requested, of the time and place of the hearing. For permits or orders involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, public notice shall be given by publication, by mail and by radio broadcast, in accordance with §§305.102-305.104 of this title (relating to Notice by Publication; Notice by Mail; and Radio Broadcasts).

(b) If the permittee requests or consents to the revocation or suspension of the permit and the executive director has not revoked or suspended the permit, the commission may take action at a regular meeting of the commission without holding a public hearing, provided notice of the hearing is given by first-class mail at least 10 days prior to the meeting. For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, notice of the hearing shall be given by first-class mail at least 30 days prior to the meeting.

Effective July 14, 1987

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

(a) 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 Class I 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 this subchapter under the following conditions:

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

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

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

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

(2) Class 1 permit modifications identified in Appendix I 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 this subchapter, the permittee must submit a modification request to the executive director that:

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

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

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§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; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the commission must deny the request;

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

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

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

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

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

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

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

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

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

(B) the commission must deny the request;

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

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

(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 Storage, Processing, or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the executive director or the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §39.13 of this title (relating to Mailed Notice), and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

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

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

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

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

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

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

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

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Subchapter F, Chapter 335 of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing 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 this subchapter, the permittee must submit a modification request to the executive director that:

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

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

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§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; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses); and Subchapter Q of this chapter (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

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

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

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

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

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

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

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

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

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

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

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

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

(e) Other modifications.

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

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria.

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

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

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

(ii) technological advancements; and

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

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

(f) Temporary authorizations.

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

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

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

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

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

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

(3) The temporary authorization request must include:

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

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

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

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

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

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

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

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

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or RCRA §3004;

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

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

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

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

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

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

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

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

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, the Government Code, Chapter 2002.

(h) Newly regulated wastes and units.

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

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

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

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 335, Subchapter H, Divisions 1 through 4 (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 RCRA Subtitle C management standards; 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 Title 40 Code of Federal Regulations (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 this subchapter.

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c), as amended through July 10, 2000 (65 FR 42292), 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.

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

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

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

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

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

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
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

B. General Facility Standards

1. Changes to waste sampling or analysis methods:
 - a. To conform with agency guidance or regulations 1
 - b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods 1¹
 - c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes 1¹
 - d. Other changes 2
2. Changes to analytical quality assurance/control plan:
 - a. To conform with agency guidance or regulations 1
 - b. Other changes 2
3. Changes in procedures for maintaining the operating record 1
4. Changes in frequency or content of inspection schedules 2
5. Changes in the training plan:
 - a. That affect the type or decrease the amount of training given to employees 2
 - b. Other changes 1
6. Contingency plan:
 - a. Changes in emergency procedures (i.e., spill or release response procedures) 2
 - b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed 1
 - c. Removal of equipment from emergency equipment list 2
 - d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan 1
7. Construction quality assurance (CQA) plan:
 - a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications 1
 - b. Other Changes 2

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

C. Groundwater Protection

1. Changes to wells:
 - a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system 2
 - b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well 1
 2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director 1¹
 3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director 1¹
 4. Changes in point of compliance 2
 5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits (ACLs)):
 - a. As specified in the groundwater protection standard 3
 - b. As specified in the detection monitoring program 2
 6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix 2
-
7. Compliance monitoring program:
 - a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title, and §335.165 of this title (relating to Compliance Monitoring Program) 3
 - b. Changes to a compliance monitoring program as required by §335.165(11) of this title, unless otherwise specified in this appendix 2

8. Corrective action program:

- a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title and §335.166 of this title (relating to Corrective Action Program) 3
- b. Changes to a corrective action program as required by §335.166(8) of this title, unless otherwise specified in this appendix 2

D. Closure

1. Changes to the closure plan:

- a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director 1¹
- b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director 1¹
- c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director 1¹
- d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director 1¹
- e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix 2
- f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 Code of Federal Regulations (CFR), 264.113(d) and (e). 2

2. Creation of a new landfill unit as part of closure 3

3. Addition of the following new units to be used temporarily for closure activities:

- a. Surface impoundments 3
- b. Incinerators 3
- c. Waste piles that do not comply with 40 CFR 264.250(c) 3
- d. Waste piles that comply with 40 CFR 264.250(c) 2
- e. Tanks or containers (other than specified below) 2
- f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director 1¹
- g. Staging Pile 2

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan 1
2. Extension of post-closure care period 2
3. Reduction in the post-closure care period 3
4. Changes to the expected year of final closure, where other permit conditions are not changed 1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure 2

F. Containers

1. Modification or addition of container units:
 - a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix 3
 - b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix 2
 - c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹
2. Modification of container units, as follows:
 - a. Modification of a container unit without increasing the capacity of the unit 2
 - b. Addition of a roof to a container unit without alteration of the containment system 1
3. Storage of different wastes in containers, except as provided in F(4) of this appendix:
 - a. That require additional or different management practices from those authorized in the permit 3
 - b. That do not require additional or different management practices from those authorized in the permit 2

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

4. Storage or treatment of different wastes in containers:
 - a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹
 - b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1
5. Other changes in container management practices (e.g., aisle space, types of containers, segregation) 2

G. Tanks

1. Modification or addition of tank units or treatment processes, as follows:
 - a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) of this appendix 3
 - b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) of this appendix 2
 - c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 2
 - d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 1¹
 - e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also

- involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹
- 2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit 2
- 3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided: 1
 - a. The capacity difference is no more than 1,500 gallons;
 - b. The facility's permitted tank capacity is not increased; and
 - c. The replacement tank meets the same conditions in the permit.
- 4. Modification of a tank management practice 2
- 5. Management of different wastes in tanks:
 - a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) of this appendix 3
 - b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) of this appendix 2
 - c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹
 - d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

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

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity	3
2. Replacement of a surface impoundment unit	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system	2
4. Modification of a surface impoundment management practice	2
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
6. Modifications of unconstructed units to comply with §§264.221(c), 264.222, 264.223, and 264.226(d) of this title	1 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 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 §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 of this title	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 soil-pore liquid	2
13. Changes in sampling, analysis, or statistical procedure	2
14. Changes in land treatment demonstration program prior to or during the demonstration	2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received	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/Cl ₂ , 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 1¹
- c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director 1¹
- d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director 1¹

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

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

M. Corrective Action

- 1. Approval of a corrective action management unit pursuant to 40 Code of Federal Regulations 264.552 3
- 2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 Code of Federal Regulations 264.553 2
- 3. Approval of a staging pile or staging pile operating term extension pursuant to 40 Code of Federal Regulations §264.554 2

N. Containment Buildings

- 1. Modification or addition of containment building units:
 - a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity 3

b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased	1
b. The replacement containment building meets the same conditions in the permit	1
4. Modification of a containment building management practice	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices	3
b. That do not require additional or different management practices	2

Adopted October 24, 2001

Effective November 15, 2001

§305.70. Municipal Solid Waste Permit and Registration Modifications.

(a) This section applies only to modifications to municipal solid waste (MSW) permits and registrations related to regulated MSW activities. Modifications to industrial and hazardous solid waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Changes to conditions in an MSW permit or registration which were specifically ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section. The effective date of the repeal of existing §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) and replacement with this new §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) is June 3, 2002. Applications for modifications filed before this new section becomes effective, will be subject to the section as it existed prior to June 3, 2002.

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

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

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

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

(1) a description of the proposed change;

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

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

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

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

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

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

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

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

(B) deny the application;

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

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

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

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

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

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

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

(i) If a permit or registration modification is listed in subsection (k) of this section or if a permit or registration modification application is made under subsection (l) of this section and the executive

director determines that notice is required, the permittee or registrant must prepare and provide Notice of Application and Preliminary Decision after technical review is complete in accordance with 30 TAC §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration). If notice is required, the applicant must file a current landowner list under §305.70(e)(5) of this title and §39.413(1) of this title (relating to Mailed Notice). The notice shall state that a person may provide the commission with written comments on the application within 23 days after the date the applicant mails notice. Before acting on an application, the executive director shall review and consider any timely written comments. The executive director is not required to file a response to comments. Prior to approval of a modification application, the permittee or registrant must file certification, on a form prescribed by the executive director, that notice was provided as required by §39.106 of this title. The chief clerk shall mail notice of issuance of a modification in accordance with 30 TAC §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update). Section 50.133(b) of this title does not apply to modifications which do not require notice under subsection (j) or (l) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) installation of a landfill gas monitoring system;

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

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

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

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

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

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

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

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

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

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

(29) substitution of an equivalent financial assurance mechanism;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be

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

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

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

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

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

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

Adopted December 5, 2001

Effective December 30, 2001

§305.71. Basin Permitting.

~~(a) Upon receipt of wastewater discharge permit applications, excluding permits for confined animal feeding operations, the commission, to the greatest extent practicable, will evaluate all future applications within a single river basin within the same year. The future expiration dates for all permits issued after the effective date of this section shall be in accordance with the basin schedules in subsection (b) of this section. However, no permit shall be issued for a term of less than two years, except as specified in this subsection. If the schedule indicates a term of less than two years, then two terms between two and five years in length will be utilized in order to coincide with the schedule. There may be instances where two permit cycles are needed for some permits before they are on the basin cycle. The commission may issue new Texas Pollutant Discharge Elimination System (TPDES) permits for less than two years duration for discharges authorized by an existing state permit issued before September 14, 1998.~~

(b) The expiration dates of wastewater discharge permits issued after the effective date of this rule will be in accord with the following schedule.

BASIN	SEGMENT	EXPIRATION DATE
FISCAL YEAR 1996		
01: Canadian River	0100 - 0105	October 1, 1995
02: Red River	0200 - 0229	December 1, 1995
03: Sulphur River	0300 - 0306	January 1, 1996
04: Cypress Creek	0400 - 0409	February 1, 1996
05: Sabine River	0506 - 0515	March 1, 1996
	0500 - 0505	April 1, 1996
24: Bays and Estuaries	2411	June 1, 1996
06: Neches River	0610 - 0614	August 1, 1996
	0600 - 0609	August 1, 1996
08: Trinity River	0824 - 0841	September 1, 1996
FISCAL YEAR 1997		
08: Trinity River	0819 - 0823	October 1, 1996
	0805 - 0818	December 1, 1996
	0800 - 0804	February 1, 1997
10: San Jacinto River	1017	March 1, 1997
	1014	May 1, 1997
	1010 - 1013	June 1, 1997
	1007	September 1, 1997
FISCAL YEAR 1998		
10: San Jacinto River	1015 - 1016	December 1, 1997
	1009	February 1, 1998
	1008	March 1, 1998
	1006	May 1, 1998
	1000 - 1005	July 1, 1998
07: Neches-Trinity Coastal	0700 - 0704	July 1, 1998
24: Bays and Estuaries	2412	July 1, 1998
	2422 - 2423	July 1, 1998
09: Trinity-San Jacinto Coastal	0900 - 0902	August 1, 1998
24: Bays and Estuaries	2426	August 1, 1998
	2428 - 2430	August 1, 1998
11: San Jacinto-Brazos Coastal	1100 - 1113	September 1998

BASIN	SEGMENT	EXPIRATION DATE
FISCAL YEAR 1999		
24: Bays and Estuaries	2421	October 1, 1998
	2424 - 2425	October 1, 1998
	2427	October 1, 1998
	2431 - 2439	November 1, 1998
12: Brazos River	1242 - 1255	December 1, 1998
	1227 - 1241	March 1, 1999
	1220 - 1226	March 1, 1999
	1204 - 1219	May 1, 1999
	1200 - 1203	July 1, 1999
13: Brazos-Colorado Coastal	1300 - 1305	July 1, 1999
24: Bays and Estuaries	2441 - 2442	August 1, 1999
16: Lavaca	1600 - 1605	August 1, 1999
14: Colorado River	1417 - 1433	September 1, 1999
FISCAL YEAR 2000		
14: Colorado River	1400 - 1416	December 1, 1999
15: Colorado-Lavaca	1500 - 1502	December 1, 1999
24: Bays and Estuaries	2451 - 2452	December 1, 1999
	2453 - 2456	January 1, 2000
17: Lavaca-Guadalupe	1700	February 1, 2000
18: Guadalupe River	1800 - 1818	February 1, 2000
19: San Antonio River	1900 - 1913	March 1, 2000
20: San Antonio-Nueces Coastal	2000 - 2004	March 1, 2000
24: Bays and Estuaries	2461 - 2463	March 1, 2000
	2471 - 2473	March 1, 2000
	2481 - 2483	April 1, 2000
21: Nueces River	2100 - 2117	May 1, 2000
22: Nueces-Rio Grande Coastal	2200 - 2204	June 1, 2000
24: Bays and Estuaries	2484 - 2485	June 1, 2000
	2491 - 2494	July 1, 2000
23: Rio Grande	2300 - 2314	September 1, 2000
25: Gulf of Mexico	2500	September 1, 2000

(c) Renewal applications for permits expiring on or after September 1, 1995, shall be due at least 180 days before the expiration date of the effective permit. The executive director may grant permission for a later date, however, applications must be submitted prior to the expiration date of the permit.

(d) The executive director may require submission of a renewal application sooner than the dates set out in §305.71(b) and (c) upon a determination that a particular waste disposal activity necessitates a more frequent evaluation.

(e) Permits generally will be issued to maintain a five year cycle of the expiration date schedule in subsection (b) of this section. The commission may issue a permit for less than a five year term if it determines that a shorter term is necessary. This agency hereby certifies that the rule as proposed has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Adopted May 26, 1999

Effective June 17, 1999

§305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee.

(a) This section applies only to Underground Injection Control permits.

(b) With the permittee's consent, the executive director may modify administratively a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures and notice requirements of this chapter. Any change to the permit not processed as a minor modification under this section must be made for cause and in compliance with appropriate public notice requirements. Minor modifications may only:

- (1) Correct typographical errors;
- (2) Require more frequent monitoring or reporting by the permittee;
- (3) ~~Change an interim compliance date in a schedule of compliance, provided the new~~ date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
- (4) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and in the judgement of the executive director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;
- (5) Change construction requirements, provided that the alterations comply with the requirements of Chapter 331 of this title (relating to Underground Injection Control); or

(6) Amend a plugging and abandonment plan which has been updated under §305.154(7) of this title (relating to Standards).

Adopted January 8, 1997

Effective February 11, 1997

Disposition Table
Rule Log No. 96174-050-AD
Permit Endorsements
Adopted April 16, 1997
Effective May 20, 1997

Chapter 305 - Consolidated Permits
Subchapter D : Amendments, Renewals, Transfers, Corrections,
Revocation, and Suspension of Permits

This table is to track sections during and after rule revisions. The column on the left lists the current sections prior to the revision. The column on the right lists where the section is proposed to end up in the final adoption.

Old Section	New Section
305.65	50.45

SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS

§§305.121 - 305.129

Effective November 15, 2001

§305.121. Applicability.

The provisions of this subchapter establish the characteristics and standards for permits issued for injection wells, waste discharge, radioactive material disposal, and solid waste management, including sewage sludge.

Adopted August 23, 2000

Effective September 14, 2000

§305.122. Characteristics of Permits.

(a) Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

- (1) become effective by statute;
- ✓ (2) are promulgated under 40 Code of Federal Regulations (CFR) Part 268, restricting the placement of hazardous wastes in or on the land;
- ✓ (3) are promulgated under 40 CFR Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance programs, monitoring, action leakage rates, and response action plans, and will be implemented through the Class 1 permit modifications procedures of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); or
- ✓ (4) are promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112 of this title (relating to Standards).

(b) A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(c) The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

(d) Except for any toxic effluent standards and prohibitions imposed under Clean Water Act (CWA), §307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a

TPDES permit may be amended or revoked during its term for cause as set forth in §§305.62 and 305.66 of this title (relating to Amendment; and Permit Denial, Revocation and Suspension.)

Adopted October 24, 2001

Effective November 15, 2001

§305.123. Reservation in Granting Permit.

Every permit is subject to further orders and rules of the commission. In accordance with the procedures for amendments and orders, the commission may incorporate into permits already granted any condition, restriction, limitation, or provision reasonably necessary for the administration and enforcement of Texas Water Code, Chapters 26, 27, and 28, and the Texas Health and Safety Code, Chapters 361 and 401.

Adopted August 23, 2000

Effective September 14, 2000

§305.124. Acceptance of Permit, Effect.

Acceptance of the permit by the person to whom it is issued constitutes an acknowledgement and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the commission.

Adopted

Effective June 19, 1986

§305.125. Standard Permit Conditions.

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are as follows.

(1) The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

(2) The permittee must apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity terminates upon the effective denial of said application.

(3) It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions. For Underground Injection Control permits, proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit, and copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director before physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) Such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission shall also be provided within five days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(B) The following must be reported within 24 hours under this paragraph.

(i) any unanticipated bypass which exceeds any effluent limitation in a TPDES permit.

(ii) violation of a maximum daily discharge limitation for any pollutants listed in a TPDES permit to be reported within 24 hours.

(C) Holders of radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules) shall report noncompliances/incidents to the executive director according to the requirements of §336.335 of this title (relating to Reporting Requirements for Incidents).

(10) Inspection and entry shall be allowed under Texas Water Code, Chapters 26 - 28, Texas Health and Safety Code, §§361.032 - 361.033, 361.037, and 401.063, and 40 Code of Federal

Regulations (CFR), §122.41(i). The statement in Texas Water Code, §26.014 that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are as follows.

(A) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(B) Except as otherwise required by Chapter 336 of this title or for records of monitoring information required by a permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period shall be extended at the request of the executive director.

(C) Records of monitoring activities shall include:

- (i) date, time and place of sample or measurement;
- (ii) identity of individual who collected the sample or made the measurement;
- (iii) date of analysis;
- (iv) identity of the individual and laboratory who performed the analysis;
- (v) the technique or method of analysis; and
- (vi) the results of the analysis or measurement.

(12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly shall be reported to the executive director as promptly as possible.

(13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits) and §305.97 of this title (relating to Action on Application for Transfer).

(14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by §305.128 of this title (relating to Signatories to Reports).

(15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(16) A permit does not convey any property rights of any sort, or any exclusive privilege.

(17) Monitoring results shall be provided at the intervals specified in the permit.

(18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

(19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application, or in any report to the executive director, it shall promptly submit such facts or information.

(20) The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code, §§26.136, 26.212, and 26.213 for violations including but not limited to the following:

(A) negligently or knowingly violating CWA, §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, §402, or any requirement imposed in a pretreatment program approved under CWA, §402(a)(3) or (b)(8);

(B) falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under a permit; or

(C) knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.

(21) For hazardous waste management facility permits, the executive director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR, §124.33(b), as amended through December 11, 1995, at 60 FedReg 63417. The information repository will be governed by the provisions in 40 CFR §124.33(c)-(f), as amended through December 11, 1995, at 60 FedReg 63417.

(22) Notice of bankruptcy.

(A) Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

- (i) the permittee;
- (ii) an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
- (iii) an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.

(B) This notification must indicate:

- (i) the name of the permittee;
 - (ii) the permit number(s);
 - (iii) the bankruptcy court in which the petition for bankruptcy was filed;
- and
- (iv) the date of filing of the petition.

Adopted August 23, 2000

Effective September 14, 2000

§305.126. Additional Standard Permit Conditions for Waste Discharge Permits.

(a) Whenever flow measurements for any sewage treatment plant facility in the state reaches 75 percent of the permitted average daily or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily or annual average flow reaches 90 percent of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75 percent of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the enforcement division of the commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

(b) The permittee shall give notice to the executive director as soon as possible of any planned physical alterations or additions to the permitted facility. In addition to the requirements of §305.125(7) of this title (relating to Standard Permit Conditions), notice shall also be required under this subsection when:

(1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §305.534 of this title (relating to New Sources and New Dischargers); or

(2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 Code of Federal Regulations (CFR) 122.42(a)(1) as adopted by §305.531 of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(3) the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(c) If the permittee is a new discharger, it must provide quantitative data described in 40 CFR §§122.21(h)(4)(I) and (ii) no later than two years after commencement of discharge; however, the permittee need not conduct tests which the permittee has already performed and reported under the discharge monitoring requirements of its TPDES permit.

Adopted December 2, 1998

Effective January 7, 1999

§305.127. Conditions to be Determined for Individual Permits.

Conditions to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable, incorporated into the permit expressly or by reference, are:

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I and Class V wells shall be for a fixed term not to exceed ten years.

(ii) Permits for Class III wells or projects may be for the life of the well or project, and shall be reviewed at least once every five years.

(B) Solid waste permits.

(i) Hazardous waste permits shall be for a fixed term not to exceed ten years.

(ii) Other solid waste permits may be for the life of the project.

(iii) Each permit for a land disposal facility used to manage hazardous waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

(C) Waste discharge permits.

(i) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be for a term not to exceed five years.

(ii) All other permits shall be as follows:

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be for a term not to exceed five years.

(II) Confined animal feeding operation permits may be for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems, shall be for a term not to exceed ten years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be for a term not to exceed ten years.

(E) Term of permit. The term of a permit shall not be extended by amendment beyond the maximum duration specified in this section.

(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit, for a duration less than the full allowable term under this section.

(G) Radioactive material licenses.

(i) Licenses issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be for a fixed term not to exceed 20 years.

(ii) Other radioactive material licenses shall be for a fixed term not to exceed ten years.

(2) Monitoring, recording, and reporting.

(A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.

(B) The type, intervals, and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.

(C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate law, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit. For TPDES permits the schedule of compliance shall require compliance not later than authorized by Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

(C) Reporting requirements for each schedule of compliance shall be specified by the commission as appropriate. Reports of progress and completion shall be submitted to the executive director no later than 14 days after each schedule date.

(D) For TPDES permits the following additional conditions apply:

(i) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge.

(ii) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(iii) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the permit schedule shall set forth interim requirements and the dates for their achievement.

(E) For UIC permits, the time for compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit. Except as provided in clause (iii)(I)(-b-) of this subparagraph, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(iii) A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows:

(I) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(-a-) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(-b-) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(II) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the cessation date, the permit shall contain a schedule leading to cessation of activities which will ensure timely compliance with applicable requirements.

(III) If the permittee is undecided whether to cease conducting regulated activities, the executive director may issue or modify a permit to contain two schedules as follows:

(-a-) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(-b-) One schedule shall lead to timely compliance with applicable requirements;

(-c-) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(-d-) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under item (-a-) of this subclause, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to cessation if the decision is to cease conducting regulated activities.

(IV) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the executive director, such as a resolution of the board of directors of a corporation.

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment. Reference is made to Chapter 330 of this title (relating to Municipal Solid Waste) for municipal solid waste facility standards, to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards, to Chapter 309 of this title (relating to Effluent Standards) for waste discharge standards, and to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.

(B) Any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a permit or prior to the amendment, modification, or suspension and reissuance of a permit shall be included in the permit.

(C) New, amended, modified, or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title for injection well standards, Chapter 335 of this title for solid waste facility standards, Chapter 336 of this title (relating to Radioactive Material Disposal Standards), Chapter 309 of this title for waste discharge standards, and Chapter 329 of this title for drilled or mined shaft standards.

(5) Wastes authorized.

(A) Injection well permits. Each category of waste to be disposed of by injection well shall be authorized in the permit.

(B) Drilled or mined shaft permits. Each category of waste to be handled, stored, processed, or disposed of in a drilled or mined shaft, or in associated surface facilities shall be authorized in the permit.

(C) Unauthorized wastes. Wastes not authorized by permit are prohibited from being transported to, stored, and processed or disposed of in a permitted facility.

(6) Permit conditions. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or requirements must be given in the permit.

Adopted August 23, 2000

Effective September 14, 2000

§305.128. Signatories to Reports.

(a) All reports requested by permits and other information requested by the executive director shall be signed by a person described in §305.44(a) of this title (relating to Signatories to Applications) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) the authorization is made in writing by a person described in §305.44(a) of this title (relating to Signatories to Applications);

(2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the applicant, such as the position of plant manager, operator of a well or well field, environmental manager, or a position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) the written authorization is submitted to the executive director.

(b) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(c) Any person signing a report required by a permit shall make the certification set forth in §305.44(b) of this title (relating to Signatories to Applications).

Adopted

Effective October 8, 1990

§305.129. Variance Procedures.

The following regulations contained in 40 Code of Federal Regulations, which are in effect as of the date of Texas pollutant discharge elimination system TPDES program authorization, as amended, are adopted by reference:

(1) Part 122, Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(m), providing requirements for variance requests by non-publicly owned treatment works.

(2) Part 122, Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(n), providing requirements for variance requests by POTWs.

(3) Part 122, Subpart C -- Permit Applications and Special NPDES Program Requirements, §122.21(o), providing requirements for expedited variance procedures and time extensions.

(4) Part 124, Subpart D -- Specific Procedures Applicable to NPDES Permits, §124.62, providing decision-making procedures for variances.

Adopted

Effective October 8, 1990

SUBCHAPTER I: HAZARDOUS WASTE INCINERATOR PERMITS

§§305.171 - 305.175

Effective November 15, 2001

§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 (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 §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 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 Code of Federal Regulations §264.343, based on the executive director's engineering judgment.

Adopted

Effective October 29, 1990

§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:

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

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

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

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

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

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

available); (i) manufacturer's name and model number of incinerator (if

(ii) type of incinerator;

(iii) linear dimensions of the incinerator unit including the cross sectional area of combustion chamber;

(iv) description of the auxiliary fuel system (type/feed);

(v) capacity of prime mover;

(vi) description of automatic waste feed cut-off system(s);

(vii) stack gas monitoring and pollution control equipment;

(viii) nozzle and burner design;

(ix) construction materials; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) such other information as the executive director may specify as necessary to ensure that the trial burn will determine the compliance with the performance standards in 40 CFR §264.343 and to establish the operating conditions required by 40 CFR §264.345 as necessary to meet those performance standards.

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

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

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

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

Adopted July 14, 1999

Effective August 8, 1999

§305.173. Operation Prior to Final Amendment of the Permit.

For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final amendment of the permit conditions to reflect the trial burn results, the commission may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of 40 Code of Federal Regulations §264.345 in the permit for a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and amendment of the facility permit by the commission.

(1) Applicants shall submit a statement, with Part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations §264.343 during the trial burn period. This statement shall include, at a

minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in 40 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 those requirements for this period most likely to meet the performance standards of 40 Code of Federal Regulations §264.343 based on the executive director's engineering judgment.

Adopted

Effective June 19, 1986

§305.174. Existing Incinerators.

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 applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with 40 CFR §270.19(b) and §305.172(2)-(5) and (7)-(10) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) or, instead, submit other information as specified in 40 CFR §270.19(c). The chief clerk shall provide notice of the executive director's intention to approve the trial burn, in accordance with the timing and distribution requirements of §305.172(6) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions). The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information specified in 40 CFR §270.19(a) are exempt from compliance with 40 CFR §§264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in §305.172 of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the executive director to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the executive director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

Adopted July 14, 1999

Effective August 8, 1999

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

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 Code of Federal Regulations Part 63, Subpart EEE by conducting a comprehensive

performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

Adopted October 24, 2001

Effective November 15, 2001

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

§§305.571 - 305.573
Effective November 15, 2001

§305.571. Applicability.

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

(b) When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

Adopted October 24, 2001

Effective November 15, 2001

§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 December 11, 1995 (see 60 FedReg 63417):

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

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

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

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

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

(b) With regard to trial burn notice procedures, the chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 Code of Federal Regulations §270.66(d)(3)(i)-(ii) as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued

such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

Adopted July 14, 1999

Effective August 8, 1999

§305.573. Interim Status and Trial Burn Requirements.

(a) For the purpose of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §§266.104 through 266.107 and of determining adequate operating conditions under 40 CFR §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners), applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of 40 CFR §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners) must either prepare and submit a trial burn plan for approval by the executive director and perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6). The chief clerk shall provide notice of the executive director's intention to approve the trial burn, in accordance with the timing and distribution requirements of §305.572(b) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions). The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in 40 CFR §270.66(f) with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the executive director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn for approval by the executive director with Part B of the permit application, the approved trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the executive director.

(b) Owners and operators who have obtained approval of trial burn plans pursuant to 40 CFR §270.66 prior to the effective date of this section may request executive director approval of the trial burn plan and the executive director may approve the trial burn plan, whether or not the trial burn has

been conducted. If the executive director does not approve the trial burn plan, then the owner or operator must prepare and submit a trial burn plan and receive approval from the executive director, and then perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6).

Adopted July 14, 1999

Effective August 8, 1999