ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 264, and 270

[FRL-3220-2]

Permit Modfications for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today proposes to amend its regulations under the Resource Conservation and Recovery Act (RCRA) governing modifications of hazardous waste management permits. This proposed rule would establish new procedures that apply to the various types of changes that facility owners and operators may want to make at their facilities. Today's proposal is based on a negotiated agreement between EPA, members of the regulated community, and representatives of State agencies and public interest groups. EPA is proposing to categorize all permit modifications into three classes and establish administrative procedures for approving modifications in each of these classes. The purpose of these proposed amendments is to provide both owners and operators and EPA more flexibility to change specified permit conditions, to expand public notification and participation opportunities, and to allow for expedited approval if no public concern exists for a proposed permit modification.

DATE: Comments must be received on or before November 23, 1987.

ADDRESSES: The public must submit an original and two copies of their comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street, SW., Washington, DC 20460.

Place "Docket number F-87-PMHP-FFFFF" on your comments. The OSW docket for this proposed rulemaking is located in the sub-basement at the above address, and is open from 9 00 a.m. to 4 00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment by calling (202) 475-9327 to review docket materials. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424-9346 (in Washington, DC call 382-3000) or Frank McAlister, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-2223.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are proposed under the authority of section 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Background

Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a "cradle-to-grave" management system designed to ensure that hazardous waste is identified and properly transported, stored, treated, and disposed of. Subtitle C requires EPA to identify hazardous waste and promulgate standards for generators and transporters of such wastes. Under section 3004 of RCRA, owners and operators of treatment, storage, and disposal facilities are required to comply with standards "necessary to protect human health and the environment." These standards are generally implemented initially through interim status standards and later through permits issued under authorized State programs or by EPA.

Under section 3005(a) of RCRA, all treatment, storage, and disposal of hazardous waste is prohibited except in accordance with a permit that implements the section 3004 standards. However, recognizing that the issuance of permits can be time-consuming, Congress created "interim status" for facilities in existence on the effective date of EPA's permitting regulations (November 19, 1980) or on the effective date of statutory or regulatory changes that subject a facility to the RCRA permit requirement. Under section 3005(e), owners and operators of hazardous waste treatment, storage, and disposal facilities in existence on the applicable date who submitted a Part A permit application and complied with section 3010 notification requirements are treated as having been issued permits until an authorized State or EPA takes final administrative action on their permit applications.

A facility with a permit or interim status may change its waste management operations only under certain conditions, specified in EPA's regulations on permit modifications (40 CFR 270.41 and 270.42) and changes in interim status (40 CFR 270.72). Today's proposal revises the regulations governing permit modifications by providing both owners and operators and EPA more flexibility to change specified permit conditions, while at the same time expanding public notification and participation opportunities.

A. Current Permit Modification Requirements

The hazardous waste management regulatory system established by EPA on May 19, 1980, recognized that permits issued to treatment, storage, or disposal facilities would need to be modified for various reasons during the life of the permit (normally ten years). Accordingly' the Agency established two different processes for modifying permits: major and minor modifications. The majority of permit changes follow the major modification procedures, including development of a draft permit, public notice, and opportunity for a public hearing as required under 40 CFR Part 124. (*See* § 270.41.) These

procedures are the same as for initial permit issuance. However, for permit modifications, the scope of the public review is limited to the specific permit conditions being modified.

The current minor modification regulations are set forth in § 270.42. They allow EPA or authorized States to make a limited set of minor changes in RCRA permits with the consent of the permit holder, but without following the procedures of 40 CFR Part 124. A minor modification may only:

- Correct typographical errors.
- Require more frequent monitoring by the permittee.
- Change an interim compliance date in a compliance schedule, as long as the new date is not more than 120 days after the date in the existing permit.
- Allow for a change in ownership or operational control of a facility.
- Change the lists of facility emergency coordinators or equipment in the permit's contingency plan.
- Change the estimate of maximum inventory of hazardous wastes in treatment or storage.
- Change the estimates of expected year of closure or schedules for final closure in the closure plan.
- Approve a longer period for closure activities, if specified criteria are met.
- Make minor changes in permit operating requirements to reflect the results of a trial burn.
- Make minor changes in permit operating requirements for conducting a trial burn.
- Grant one extension in the time period for determining operational readiness after completion of construction.
- Make minor changes in the treatment program requirements for land treatment units to improve treatment of hazardous constituents.
- Make minor changes in conditions specified for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration.
- Allow a second treatment demonstration for land treatment, under specified circumstances, provided that the conditions for a second demonstration are substantially the same as those for the first demonstration.
- Allow treatment of a hazardous waste not previously specified in the permit if the waste has been prohibited from land disposal and if certain conditions regarding the management of the waste are met.
- Allow changes at a facility to treat or store restricted wastes in tank and container units not previously specified in the permit, pending subsequent approval as a major modification.
- Any permit modifications not included on this list are major modifications.

This list of minor modifications is the result of several separate rulemakings. The May 19, 1980 regulations included the first five minor modifications listed above (45 FR 33430). Subsequent minor modifications were added as follows: (1) January 12, 1981, three minor modifications were identified regarding closure activities (46 FR 2889); (2) June 24, 1982, three minor modifications were added for incinerator permits (47 FR 27520); (3) July 26, 1982, three minor modifications were listed for land treatment permits (47 FR 32369); (4) November 7, 1986, a minor modification was specified to allow the addition of land disposal restricted wastes to the permit for purposes of treatment in permitted units (51 FR 40653); and (5) July 8, 1987, a minor modification was established to allow the addition of tanks and containers for treatment and storage of land disposal restricted wastes, pending subsequent approval as a major modification (52 FR 25760).

B. Need for Revisions to Modification Process

In the preamble to the May 19, 1980 regulations that established the current permit modification requirements, the Agency acknowledged that there may be cases where additional facility changes should be treated as minor modifications. However, at that time the Agency concluded:

> Because there is no experience with the RCRA permit program yet, EPA lacks the information necessary to determine which changes in methods or hazardous wastes would really be minor and which would not be minor. (*See* 45 FR 33317.)

After several years of experience with permitted facilities, EPA and authorized States have found that in many cases the current permit modification regulations are unnecessarily restrictive and seriously hamper the implementation of the permitting program. EPA has found that the modification procedures are time-consuming and resource-intensive, even for routine and administrative tasks. Simple permit modifications, such as a change in the name of the emergency coordinator, require significant paperwork on the part of EPA and in some cases entail a delay in implementation, because of low Agency priority. In addition, "major" modifications, some of which are trivial, require the full permit issuance procedures, including preparation of a draft permit modification, public notification, a 45-day comment period, and the opportunity for a hearing. Major modifications, which can range from building a roof over a storage area to adding a new incinerator to a facility permit, can take six months to a year for approval. The result of this situation has been to delay or discourage facility changes, many of which would lead to improved management of wastes.

The Agency believes that permits must be viewed as living documents that can be modified to allow facilities to make technological improvements, comply with new environmental standards, respond to changing waste streams, and generally improve waste management practices. Since permits are usually written to encompass a ten-year period of operation, the facility or the permit writer cannot anticipate all or even most of the administrative, technical, or operational changes that will be required over the permit term for the facility to maintain an up-to-date operation. Therefore, permit modifications are inevitable. In fact, EPA estimates that a typical permit may have to be modified two or three times a year.

In the past several years, EPA, States, permittees, and members of the public have recognized that current procedures must be revised to allow greater flexibility in modifying permits. The need for greater flexibility is becoming increasingly important as more permits are issued (particularly in response to the permitting deadlines specified in the Hazardous and Solid Waste Amendments (HSWA) of 1984), leading to a corresponding increase in demand for permit modifications. In addition, regulatory developments will increase the demand for permit modifications. For example, recent and upcoming land disposal restrictions on untreated wastes will force hazardous waste facilities to move away from disposal practices to hazardous waste treatment. If permitted facilities are not able to make these changes readily, EPA could be forced to delay the effective date of some aspects of the land disposal restrictions program because of the lack of national capacity. As another example, in response to HSWA and other initiatives, EPA is in the process of identifying and listing new hazardous wastes. Permitted facilities will require permit modifications to handle these new wastes—even if they were already handling the wastes at the time of listing. If permit modifications cannot be readily made, the operation of these facilities will be severely disrupted.

For these reasons, the demand for permit modifications will increase substantially over the next few years.

Unless EPA improves the permit modification procedures, significant EPA (and permit holder) resources will be spent on making trivial or environmentally irrelevant changes to permits, and will be diverted from more important tasks. More important, perhaps, improvements in the handling and treatment of hazardous waste will be delayed, and the regulated community will find itself frozen by rigid permit conditions. The net result of this situation will be an increased threat to human health and the environment and an increased shortfall in hazardous waste treatment, storage, and disposal capacity.

C. Recent Proposed Changes

Amendments to the permit modification regulations were proposed by EPA in 1984, 1986, and 1987.

In 1980, industry and environmental groups challenged the RCRA permitting rules, as well as other hazardous waste regulations (*NRDC et al.* v. *U.S. EPA*, No. 80–1607 and consolidated cases (D.C. Circuit)). Industry groups argued, among other points, that the range of causes for minor modifications was too narrow and would significantly complicate and delay trivial facility changes. As part of a broader settlement between EPA and the industry and environmental groups, EPA agreed to propose an expanded list of minor modifications. The expanded list, which was proposed on March 15, 1984 (49 FR 9850), defined three additional areas in which minor permit modifications could be made: (1) Modifications to various plans contained in the permit; (2) the addition of new wastes at the facility under certain circumstances; and (3) the use of new treatment techniques in certain units.

The rule did not provide a definition of "minor" in each of these areas. Instead, EPA or the authorized State would have discretion in determining whether a given modification was major or minor. The preamble, however, provided extensive guidance on the kinds of modifications in each of the areas that would be considered minor or major. Furthermore, as a broad policy, the preamble stated that EPA would consider a modification "minor" if it reflected a routine technical or administrative change that would have negligible impact on human health or the environment.

Response to the proposal was varied. In general, industry and State governments supported the flexibility of the proposed approach, although industry commenters suggested ways to broaden it. A coalition of environmental groups, however, strongly opposed the proposal, stating that it reflected a departure from existing public participation policy and gave too much discretion to regulating officials. Environmental commenters supported a list of minor modifications that was more narrow in scope and more specific in detail.

Because of the importance of the issue and the diverse nature of public comments, EPA decided not to issue the March 1984 proposal as a final rule, but instead identified RCRA permit modifications as a project for regulatory negotiation. Negotiations on this issue are discussed in section II.D of this preamble.

Two other recent EPA rulemakings addressed permit modifications. The December 1, 1986 land disposal restriction rule (51 FR 44740) proposed to allow, as a minor modification, changes at a facility to treat or store restricted wastes in tanks and containers. This proposal was issued in final form on July 8, 1987 (52 FR 25760). In addition, on August 14, 1987 (52 FR 30570), the Agency proposed that permitted facilities may receive a minor modification to allow continued management of newly identified or listed hazardous wastes. This proposal would require the owner and operator subsequently to obtain approval of the change as a major modification, thereby invoking the public participation procedures of Part 124.

It should be noted that the amendment proposed on August 14, along with the other current minor modification provisions, will be replaced by today's proposed modification scheme if it is adopted as proposed. Nevertheless, the Agency will proceed with the August 14 proposal independent of today's proposal because of the need for expeditious permit changes for newly identified or listed hazardous wastes. The Agency recognizes that any final action taken on the August 14 proposal will most likely have only a short-term effect, pending the outcome of today's proposal.

D. Regulatory Negotiation

Today's proposed rule was developed through the process of regulatory negotiation. This process is an alternative means for developing regulations in which individuals and groups with negotiable interests directly affected by the rule work cooperatively with EPA to develop a standard by committee agreement.

In mid-1986, EPA communicated with various parties interested in developing a new approach to permit modifications, including hazardous waste generators and representatives from the waste management industry, State governments, and environmental and citizen groups. Once the appropriate affected interests had been identified, EPA established a committee under the Federal Advisory Committee Act to negotiate the provisions of the standard. The formation of the Permit Modification Negotiating Committee was announced in the **Federal Register** on July 16, 1986 (51 FR 25739).

Between September 10, 1986 and February 24, 1987, the Committee met six times to discuss a variety of technical and policy issues associated with developing a new permit modification scheme. At the final meeting on February 24, the Committee members, with one exception, reached agreement on the major provisions of the permit modification approach presented in today's proposal. One Committee member did not sign the final agreement because the member could not concur on one critical provision. That provision and the Committee members' comments on it are discussed in section IV.B.2 of this preamble.

The 18 parties who signed the agreement concurred with the new permit modification system as a whole. Inevitably, as in any negotiation, some parties may have made concessions in one area in exchange for concessions from other parties in other areas. As a result, changes in particular parts of the proposed rule could significantly affect one or more of the Committee members' support for the proposal. For this reason, the Agency has tried carefully to translate the agreement in principle into specific regulatory language. A few items that are a part of today's proposal were not addressed or resolved by the Committee. The Agency included them because it believes they are necessary to support the proposed rule. Any provision that EPA has added has been clearly identified in this preamble.

The signed Committee statement has been included in the public docket for this rule. It is available at the address listed at the beginning of this notice.

Members of the negotiating Committee and their affiliation are as follows:

Negotiators/Affiliation

1. Johan Bayer, Chemical Waste Management, Inc.
2. John Campion, Pharmaceutical Manufacturers Association
3. Lecil Colburn, American Coke and Coal Chemical Institute
4. Frank Coolick, New Jersey Bureau of Hazardous Waste Engineering
5. Gary Dietrich, ICF Corporation/ ENSCO, Inc.

6. Larry Eastep, Illinois EPA
7. Bonnie Exner, Citizen Intelligence Network
8. Richard Fortuna, Hazardous Waste Treatment Council
9. Arthur Gillen, BASF Corporation, Synthetic Organic Chemical Manufacturers Association
10. Khris Hall, IBM Corporation
11. William Hamner, North Carolina Division of Health Services
12. Minor Hibbs, Texas Water Commission
13. Gretchen Monti, League of Women Voters
14. Philip Palmer, Dupont Corporation and Chemical Manufacturers Association
15. Suellen Pirages, National Solid Waste Management Association
16. Ann Powers, Chesapeake Bay Foundation
17. Suzi Ruhl, Legal Environmental Assistance Foundation
18. Marcia Williams, U.S. EPA
19. Eleanor Winsor, Pennsylvania Environmental Council

Facilitators

John A.S. McGlennon and Peter Schneider, ERM–McGlennon Associates. Executive Secretary, Chris Kirtz, U.S. EPA.

III. Summary of Proposed Approach

The Agency is proposing to revise the regulations governing permit modifications (40 CFR 270.41 and 270.42) to introduce a permit modification process that recognizes different types or classes of modifications and assigns regulatory requirements according to type of modification. The revisions provide both owners and operators and EPA more flexibility to change specified permit conditions, expand public notification and participation opportunities, and allow for expedited approval if no public concern exists regarding a proposed change.

The Agency's proposal mainly addresses modifications requested by a permittee. It restructures §§ 270.41 and 270.42, which currently specify major and minor modification procedures, respectively, for modifications instigated by either the permittee or the Agency. The proposal would alter § 270.41 to include only modifications initiated by the authorized Agency; the current major modification procedures for these changes remain in effect. The proposal alters § 270.42 to refer only to modifications requested by the permittee.

The proposed permit modification process recognizes three classes of modifications requested by the permittee. Class 1 and 2 modifications do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health and the environment. Class 1 covers routine changes, such as typographical errors or new telephone numbers. Class 2 modifications address common or frequently occurring changes needed to maintain a facility's capability to manage wastes safely or to conform with new regulatory requirements. Class 3 modifications cover major changes that substantially alter the facility or its operations.

Class 1 changes are generally allowed without prior Agency approval. Owners and operators must, however, notify the public and the authorized Agency once they have made these changes. In some cases, which are indicated in Appendix I to 40 CFR Part 270, prior Agency approval is required. The Agency may reject any Class 1 modification, with cause.

Class 2 modifications begin with a modification request to the authorized Agency, public notice by the facility owner of a modification request, an early comment period, and an informational meeting with the public. Within 90 days of submission of a request for a Class 2 modification request, the Agency must approve or deny the request extend the review period 30 days; or approve a temporary authorization for up to 180 days. If the Agency does not take action by the end of the 30-day extension, the changes specified in the modification request are automatically authorized for a period of 180 days. If the Agency has not acted by the end of the 180-day period, the changes are authorized for the duration of the permit. This "default provision," which will ensure prompt action on Class 2 modification requests, is necessary to allow facilities to respond promptly to changing conditions and to give them flexibility to address new regulatory requirements, such as the land disposal restrictions. The proposal also removes the current prohibition on preconstruction for Class 2 modifications.

Class 3 modifications are subject to the same initial public notice and meeting requirements as Class 2 modifications. However, the "default" provision of Class 2 does not apply. Furthermore, an EPA decision to grant the modification request is subject to the permit issuance procedures of 40 CFR Part 124. The Agency must prepare a draft permit modification, notify the public of the draft modification, hold a public hearing on the modification if requested, and grant or deny the request.

The Agency also proposes to change the current permit modification requirement for facilities that are handling a waste when that waste becomes newly listed or is identified as hazardous. For Class 1 modifications, facilities may make the change immediately, as long as they notify EPA and the public of the changes. For Class 2 or Class 3 modifications, the owner or operator may make the change without prior approval; however, he must submit a complete permit modification request within 180 days of the **Federal Register** publication designating the waste as hazardous.

The proposal also gives EPA the authority to grant temporary authorization, without prior public notice and comment, for activities that are necessary for facility owners and operators to respond promptly to changing conditions. Temporary authorizations, for terms ranging from 90 to 180 days, may be granted to Class 2 or Class 3 modifications that meet criteria specified in proposed § 270.42(e) Owners and operators who are granted a temporary authorization are required to notify the public. Temporary authorizations that involve "permanent" activities (i.e., activities that extend beyond 180 days) must also undergo Class 2 or Class 3 public participation procedures for permit modifications.

Specific modifications are assigned to Class 1, 2, or 3 in Appendix I to 40 CFR Part 270. If a single modification will require two or more changes in the permit, then the modification request carries the highest classification assigned to any of the changes. Permit modifications not listed in Class 1, 2, or 3 may be submitted under Class 3. Alternatively, the permittee may request a Class 1 or 2 determination from the Agency.

EPA or an authorized State must maintain a listing of all approved permit modifications and periodically publish a notice that the list is available for review.

IV. Discussion of Proposed Rule Language

A. Modification, Revocation, and Reissuance of Permits

Under current regulations, EPA may modify RCRA permits either at the request of the permittee, or, if certain criteria are met, without the permittee's approval. The negotiating Committee focused primarily on changes requested by the permittee; EPA's authority to reopen and modify permits—for example, in response to new information or new regulations—lay beyond the

scope of the Committee's attention. In revising the permit modification provisions of §§ 270.41 and 270.42, therefore, EPA has left the Agency's authority to reopen permits unchanged.

The Agency, however, is proposing to substantially restructure §§ 270.41 and 270.42 to reflect the Committee's agreement. Under this restructuring, § 270.41 would refer to permit modifications initiated by the Agency, and the current major modification procedures would remain in effect for these changes. Section 270.42 would refer to changes requested by the permittee; in this case, the permit modification classifications and procedures agreed upon by the Committee would apply.

Section 270.41, as proposed today, would identify three causes for which EPA might require a permit modification: Alterations or additions to the permitted facility or activity; new information received by the Agency; or new standards, regulations, or judicial decisions affecting the basis of permit requirements. The first two of these causes remain unchanged from the current regulatory language. The third cause—new regulations—has been revised so that it is consistent with the language EPA proposed on March 28, 1986 (51 FR 10706), which allows the Agency to reopen RCRA permits when necessary to ensure compliance with new regulatory standards. EPA intends to promulgate the 1986 proposal in the near future in a separate rulemaking.

EPA is also proposing to delete those portions of § 270.41(a)(3) that would allow permittees to request major modifications for changes made in response to new regulations or judicial decisions. These, presumably, would generally be changes in cases where EPA standards were relaxed, and the permittee wished to relax permit conditions correspondingly. Under today's proposal, permittees could still request such changes; however, they would do so in accordance with the procedures for Class 1, 2, or 3 modifications in proposed § 270.42. The effect of this proposed amendment will be to eliminate the deadlines in the current § 270 41(a)(3) by which permittees must request permit modifications in the case of new regulations or judicial decisions. Under § 270.4l(a)(3), permittees must now request such modifications within 90 days after the **Federal Register** notice announcing the regulatory change or within 90 days of a judicial remand of the regulations. EPA, however, now believes that facilities should have the opportunity to make such changes at any time, as long as they are approved according to the appropriate permit modification procedures. Therefore, it is proposing to eliminate the deadlines on submission of the modification request. The Agency requests comment on this amendment, and on other alternative procedures for this category of permit modification.

Finally, EPA is proposing today to remove from § 270.41 those modifications that would be made at the request of the permittee. These include changes in compliance schedules (§ 270.41(a)(4)) and changes required by regulation, such as modification of a closure plan in accordance with § 264.112(b) or § 264.118(b) (§ 270.41(a)(5)(i)) or extension of the closure period (§ 270 41(a)(5)(ii)). These modifications are being addressed instead in proposed § 270.42, where they are categorized as Class 2 or 3 changes.

Under today's proposal, changes authorized by § 270.41 would be subject to the current major modification procedures—that is, the current procedures for permit issuance. The Agency considered adopting Class 2 or 3 procedures for these changes, but believes that such an approach would not be appropriate. The procedures developed by the Negotiating Committee are designed primarily for situations where a facility desires a change. The Agency believes that, where EPA is imposing a change on a permitted facility, the facility owner or operator should not be required by regulation to notify or meet with the public; this should be the Agency's responsibility. In addition, the default provision of Class 2 modifications makes no sense where the Agency is requiring permit modifications that the facility may be less than enthusiastic about adopting. In these cases, the Agency believes that the current major modification procedures provide an appropriate level of protection for the permittee, and reasonable opportunity for public comment. Therefore, the Agency has not amended the procedures by which it may modify a permit in the case of facility alterations, new information, or new regulations. As discussed, the Negotiating Committee did not specifically address changes of this type. The Agency solicits comment on the approach it is taking.

The Agency would like to point out that today's proposal primarily addresses the procedures for approving facility changes and for public notification and participation regarding these changes. The substantive standards that apply to the design and operation of the new activities at a facility are not affected by today's proposal. Therefore, any permit modification, whether a Class 1, 2, or 3 change, will impose the appropriate Part 264 requirements, including any new standards that are applicable to the activity (e.g., air emission standards of part 269 pursuant to section 3004(n), when promulgated).

B. Procedures for Class 1, 2, and 3 Modifications

1. Class 1 Modifications

Class 1 modifications cover changes that are necessary to correct typographical errors in the permit or routine changes to the facility or its operation. They do not substantially alter the permit conditions or reduce the facility's capacity to protect human health and the environment. Generally, these modifications include correction of typographical errors; necessary updating of names, addresses, or phone numbers identified in the permit or its supporting documents; upgrading, replacement, or relocation of emergency equipment; improvements of monitoring, inspection, recordkeeping, or reporting procedures; updating of sampling and analytical methods to conform with revised Agency guidance or regulations; updating of certain types of schedules identified in the permit; replacement of equipment with functionally equivalent equipment; and replacement of damaged ground-water monitoring wells. The specific modifications that fall into Class 1 are enumerated in Appendix I to 40 CFR Part 270. This Appendix is discussed more fully in section IV.C of this preamble.

Because Class 1 modifications do not substantially alter the permit or reduce the human health and environmental protection it provides, the Committee agreed that they do not need to be reviewed and approved in the same manner as permit applications and requests for major permit modifications. The Committee concluded that, in most cases, the permittee should be allowed to put Class 1 modifications into effect without prior approval, and should be required simply to notify EPA and the public of the changes. In other cases, the Committee agreed that prior Agency approval should be required. The modifications that would require prior Agency approval are identified with an asterisk in Appendix I.

Proposed § 270.42(a) specifies in detail the approval procedures agreed upon by the Committee for Class 1 modifications. Under these procedures, the permittee could, at any time, put into effect a Class 1 modification (except those

requiring prior Agency approval) However, the permittee would be required to notify the Agency by certified mail or by any other means that establish proof of delivery within seven calendar days of making the change. The notice would have to specify the change being made to the permit conditions or documents referenced in the permit and explain briefly why it was necessary.

In addition, the Committee agreed that within 14 days of putting the change into effect, the permittee would be required to notify by mail all persons on the facility mailing list concerning the change. EPA or an authorized State is currently required under 40 CFR 124.10(c)(1)(viii) to compile and maintain such a list for each RCRA permitted facility. The list must include all persons who have asked in writing to be on the list (for example, in response to public solicitations from the Agency). Also, it generally would include both local residents in the vicinity of the facility and statewide organizations that have expressed interest in receiving such information on permit modifications.

Because the facility mailing list is maintained by the Agency or the authorized State, rather than the facility, EPA recognizes that facilities may not in all cases have the most recent facility mailing lists. The Committee did not specifically address this issue. EPA, however, believes that the facility has the responsibility initially to obtain from EPA or the authorized State a complete facility mailing list and to update it by contacting the Agency periodically. However, EPA believes it should be the Agency's responsibility to inform the facility of new additions to the list, and the facility should not be held responsible for failure to notify persons recently added to the EPA list when it has made a reasonable effort to keep its list current.

Under the current requirements of 40 CFR 124.10(c)(1)(ix) (A) and (B), notice of permit applications and major permit modification requests must also be sent to units of local and State governments having jurisdiction over the facility. The Committee did not address the question of whether notices of Class 1, 2, or 3 permit modifications should be sent to these authorities as well as to persons on the public mailing list. However, the Agency recognizes that it may be appropriate to require notification of local and state authorities and solicits comment on this issue.

Although the permittee may make most Class 1 modifications without EPA approval or prior public notice, proposed § 270.42(a)(iii) provides that the public may ask EPA to review any Class 1 modification, and that the Agency may for cause reject a Class 1 modification—either in response to public comments or at its own discretion. The Committee did not specify procedures for denying Class 1 modifications. To clarify this authority, EPA is proposing that, if the Agency denies a Class 1 modification request, it would be required to notify the permittee in writing of this ruling, and the permittee would be required to comply with the original permit conditions. The Committee recognized that it would be extremely unlikely that the Agency would ever have to exercise this authority given the trivial nature of Class 1 modifications; however, the Committee believed that EPA should have the final authority to accept or reject a modification, and it therefore explicitly incorporated this authority into its agreement.

As discussed above, the Committee agreed that certain Class 1 modifications—such as changes in interim dates in schedules of compliance or minor changes in incinerator trial burns—should be allowed only after Agency approval. This provision has been adopted in proposed § 270.42(a)(2), which requires the permittee to secure written Agency approval before putting into effect Class 1 modifications identified in Appendix I with an asterisk. In this case, the approval procedure would be analogous to the current minor modification procedures, except that the permittee would still be required to notify persons on the facility mailing list of the change within 14 days of putting it into effect. (EPA believes that the permittee's request for approval of the modification would satisfy the requirement under proposed § 270.42(a)(1) of notifying EPA within 7 days of putting a Class 1 modification into effect; therefore, the permittee would not be required to notify EPA a second time after the change was effected.)

2. Class 2 Modifications.

Class 2 modifications cover 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 by the facility, (ii) technological advancements, and (iii) many of the expected regulatory changes, including new land disposal restrictions and listings or identifications of new hazardous wastes,[1] where such changes can be implemented without substantially changing the design specifications or management practices prescribed by the permit. Generally, these changes cover increases of 25 percent or less in a facility's non-land-based treatment or storage capacity, authorizations to treat or store new wastes that do not require different unit design or management practices, and modifications to improve the design of hazardous waste management units or improve management practices. The specific modifications that fall in Class 2 are identified in Appendix I to 40 CFR Part 270. This Appendix is discussed more fully in section IV.C of this preamble.

In the Committee's formulation, Class 2 modifications do not substantially alter the conditions of the permit or reduce protection of human health or the environment. In general, they address common and frequently occurring changes needed to maintain the facility's capability to manage wastes. The Committee, therefore, agreed that these modifications require timely review, justifying different processing and public participation procedures from those currently required for major permit modifications. EPA is proposing the procedures agreed upon by the Committee in § 270.42(b) of this rule.

Under proposed § 270.42(b)(1), a permittee wishing to make a Class 2 modification would be required to submit to EPA a modification request describing the exact change to be made to the permit conditions and supporting documents, identifying the modification as a Class 2 modification,[2] explaining why the modification is needed, and providing the applicable information required by 40 CFR 270.13 through 270.21 and 270.62. The Committee also recommended that permittees discuss proposed modifications with the Agency and the community before submitting the modification request. EPA strongly seconds this recommendation; the Class 2 process will only be effective and provide substantial benefit to the regulated community if modification requests are clear and complete. Early contact with the Agency should eliminate unnecessary delays and denials of the modification requests.

Based on the Committee's agreement, § 270.42(b) also requires the permittee to notify persons on the Agency's facility mailing list about the modification request and to publish a notice of the request in a local newspaper. (The

[1] The Committee agreed that changes necessary to manage newly listed or identified wastes required special procedures. The procedures are proposed in § 270.42(g) of this rule, and described in section IV.B.7 of this preamble.

[2] The Agency has added this requirement. The Committee did not explicitly identify it.

facility mailing list is defined in proposed § 270.2 and is discussed in section IV.B.1 of this preamble.) Under the Committee agreement, the notice would have to be mailed to persons on the facility list and published on the date of submission of the request to the Agency. Although the Agency is proposing this requirement as agreed upon by the Committee, EPA requests comment on whether the permittee should be provided more flexibility in the timing of the notice mailing and publication. The Agency believes it may at times be logistically difficult for the facility to ensure that the submission to EPA, the facility list mailing, and the newspaper publication all occur on the same day. As one alternative, the rule might require that the notice be mailed to persons on the facility list no later than the date of submission of the request to the Agency, and no earlier than seven days before that date. A second alternative would be to require the permittee to submit his request to the Agency no fewer than 7 days and not more than 21 days before mailing and publishing the notice.

Proposed § 270.42(b)(2) specifies the information that would be required in the notice: (i) Announcement of a 60-day comment period, during which interested persons may submit written comments to the Agency; (ii) the announcement of the date, time, and place for a public meeting; (iii) the name and telephone number of the permittee's contact person, whom the public can contact for information on the request; (iv) the name and telephone number of an Agency contact person whom the public could contact for information about the permit, the modification request, applicable regulatory requirements, permit modification procedures, and the permittee's compliance history; (v) information on where the public can view copies of the modification request and any supporting documents; and (vi) a statement that the permittee's compliance history during the life of the permit is available from the Agency's contact person. As the Committee agreed, proposed § 270.42(b)(2) would require the permittee to submit to the Agency evidence that this notice was published in a local newspaper and mailed to persons on the facility mailing list. Finally, the permittee would be required to 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. This location might be, for example, a public library, a local government agency, or a location under the control of the owner.

EPA believes that several issues raised by the information requirements in this notice deserve further explanation. First, as proposed in § 270.42(b)(4), the 60-day comment period would begin on the date the modification request was mailed to EPA; the notice mailed to the public and published in a local newspaper should indicate the final date of the comment period. Second, EPA or the authorized State Agency would have the responsibility of providing the permittee with the name, address, and telephone number of the Agency contact person, who would be specified in the notice. Finally, the "permittee's compliance history," referred to in proposed § 270.42(b)(2)(vi), might constitute a summary list of violations during the life of the permit or other reasonable summary statements. It would not include confidential inspection reports or other items not in the public record. The Agency would maintain this summary and make it available to the public on request.

The Committee also agreed that the permittee should be required to hold an informational meeting, open to all interested members of the public, no fewer than 15 days after publishing the notice and no fewer than 15 days before the end of the comment period. The purpose of the meeting would be to enable the permittee and the public to exchange views and, to the extent possible, resolve any issues raised by the modification request. (Where issues were not resolved at the meeting, interested parties might meet in smaller subsequent meetings to resolve them.) The meeting would have no official status—that is, an official transcript of record of the statements made at the meeting would not be required and the Agency would not be obligated to attend the meeting or to consider comments made at the meeting. However, the Committee expects that the meeting would lead to more informed written comments to the Agency and, to the extent that issues were resolved, written comments from the permittee revising the modification request.

The Committee agreed on specific procedures for Agency review and approval or denial of Class 2 modification requests, which are proposed at § 270.42(b)(6). Under proposed § 270.42(b)(6)(i), the Agency must make one of the following four decisions within 90 days of receiving the modification request (i) Approve the request with or without changes; (ii) deny the request; (iii) notify the permittee that it will make a decision on the request within 30 days; or (iv) approve the request, with or without changes, as a temporary authorization having a term of up to 180 days. If EPA notifies the permittee of a 30-day extension for a decision, it must, by the 120th day after receiving the modification request, make one of the following decisions: (i) Approve the request, with or without changes; (ii) deny the request; or (iii) approve the request as a temporary authorization for up to 180 days.

It should be noted that the Committee agreement specified that the Agency would have to make its decision within 90 (or 120) days of *submission* of the Class 2 modification request. EPA believes that this date may at times be difficult to ascertain, and therefore has modified the requirement so that it applies 90 (or 120) days after receipt of the modification request. The Agency solicits comments on this change.

If the Agency fails to make one of the three decisions listed above by the 120th day, the activities described in the modification request, as submitted, are authorized for a period of 180 days as an automatic temporary authorization without Agency action. At any time during the term of the automatic temporary authorization, however, the Agency may approve or deny the permit modification request. If the Agency does so, this action will terminate the temporary authorization. If the Agency has not acted on the modification request within 250 days of receipt of the modification request, the permittee must under proposed § 270.42(b)(6)(iv) notify persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments, that the temporary authorization will become permanent unless EPA acts to approve or deny it. If the Agency fails to approve or deny the modification request during the term of the automatic temporary authorization, the activities described in the modification request become authorized without Agency action on the day after the end of the term of the automatic temporary authorization. This authorization would last for the life of the permit unless modified later by the permittee (under § 270.42) or the Agency (under § 270.41).

During the term of any automatic authorization, whether it was a temporary authorization occurring at day 120 or a final authorization at day 300, the newly authorized activities would be limited to those described in the modification request. Furthermore, the permittee would be required to

comply with all applicable Part 265 standards and, to the extent practicable, with the standards of Part 264. These standards would be enforceable by EPA or an authorized State, and any deviation from them—even if the deviation was explicitly described in the modification request—would constitute a violation of Part 264 or Part 265.

As proposed today, an automatic temporary authorization can only occur in the absence of an Agency decision by the 120th day after a Class 2 modification request (or by an alternative date established by § 270.42(b)(6)(vii) or § 270.42(e)(4)(ii), discussed later in this preamble). In contrast, if the Agency takes action on the modification request by *issuing* a temporary authorization by the prescribed deadline, then an automatic authorization cannot subsequently occur on the modification request. In this case, if the Agency has not approved the modification by the date that the temporary authorization expires, then the facility's activities under the authorization would have to cease. The facility would then have to await Agency action or resubmit the permit modification request. Although this approach is consistent with the Committee Agreement, the Committee did not specifically address the operation of automatic authorizations after Agency-issued temporary authorizations. An alternative to today's proposed approach would be to make the automatic authorization provision also apply to these Agency-issued temporary authorizations, including the notification on the 250th day as described above. This alternative would assure the permittee that a final action on his or her modification request would occur on a certain schedule. The Agency solicits comments on these and other alternatives in the Class 2 modification process.

It should be noted that the Committee agreement specified that during the term of an automatic authorization, facilities should be required to comply with Part 264 standards. However, the Agency is concerned that in some cases the Part 264 standards are not self-implementing—they require the permit writer to determine the appropriate permit condition based on the requirements of Part 264 and the operation at the specific facility. The non-self-implementing nature of some of these standards, may cause enforcement problems for the Agency and may not provide practical performance standards for a facility. For these reasons, EPA has modified the Committee Agreement on this point to require compliance with Part 265—which is designed to be self-implementing—at a minimum, and with Part 264 where the standards are clearly established for the activity subject to the automatic authorization. The Agency solicits comments on this proposed approach.

The automatic authorization of Class 2 modifications if EPA or a State failed to approve or deny a modification request expeditiously proved to be a controversial element of the negotiated agreement. One Committee member declined to sign the final agreement because of this provision (which became known as the "default provision"). She stated concerns in a letter to EPA, which is included in the record for this rulemaking. The rest of the Committee members, however, accepted the default provision as necessary to ensure that the regulated community received some assurance that Class 2 modifications—which are relatively straightforward in nature—can be made on a predetermined schedule.

EPA believes that the default provision is an important feature of the negotiated agreement, and disagrees with the concerns expressed by the dissenting Committee member. Class 2 modifications represent a restricted category of changes, such as increases in tank or storage capacity up to 25 percent, addition of new wastes that do not require new management practices, and changes in vegetative requirements for closure. They are the kinds of changes that can be readily reviewed, because they do not represent major deviations from the facility's permitted activities, and the risks they might entail are limited. In fact, these modifications will frequently improve operations at the facility, leading to more efficient handling and treatment of the nation's hazardous waste. Requests for these kinds of changes can and should be acted upon promptly by the Agency. Where the modification fails to comply with Part 264 standards, or where information in the request is insufficient to determine compliance, EPA will deny the request. However, where the request is justified, it should be granted expeditiously. The "default provision" will both ensure prompt Agency attention and assure the facility owners that the review of their requests will not drag on indefinitely.

EPA believes that the "default provision" will only rarely be exercised. However, it should be emphasized that, even in the case of a decision by default, the proposal provides ample protection to human health and the environment. In the first place, as described above, the kinds of activities that could take place under an automatic authorization are limited. In the second place, Part 265 standards, and to the extent practicable Part 264 standards, would apply to all activities conducted under an automatic authorization, ensuring that the changes must comply with enforceable standards. Therefore, EPA disagrees with the comment that this approach would be unenforceable or would not provide reasonable protection to human health and the environment.

For these reasons, EPA supports the "default provision" in today's proposal. The concept of automatic approvals has worked well in other programs, such as EPA's review program for new chemicals under the Toxic Substances Control Act, and it is equally applicable here. Particularly because it is balanced by significantly strengthened procedures for public participation, EPA believes that the "default provision" for limited classes of modifications would contribute to a more effective and streamlined permitting program.

One final issue related to Class 2 modifications deserves discussion. The Committee agreed that the facility owner/operator should be allowed to perform any construction necessary to implement a Class 2 change before the modification request is granted. The permit modification regulations currently prohibit "preconstruction" for permit modifications, just as the statute prohibits preconstruction of hazardous Waste management facilities before a permit is issued. The Committee agreed that, because of the limited nature of Class 2 modifications and the need for flexibility in maintaining permits, preconstruction should be allowed for this category of modification. The Agency believes that it has the authority under RCRA to allow "preconstruction" of these Class 2 changes. The facility owner/operator, however, would assume the risk that EPA might deny the permit modification request, and the construction already undertaken would become unusable, at least for managing hazardous waste. The preconstruction provision for Class 2 modifications is proposed under § 270.42(b)(8).

3. Class 3 Modifications

Class 3 modifications cover changes that substantially alter the facility or its operations. Generally, they include any increases in the facility's land-based treatment, storage, or disposal capacity; increases of more than 25 percent in the facility's non-land-based treatment or storage capacity; authorization to treat, store, or dispose of wastes not listed in the permit that require changes in unit design or management practices;

substantial changes to landfill, surface impoundment, and waste pile liner and leachate collection/detection systems; and substantial changes to the groundwater monitoring systems or incinerator operating conditions. The specific modifications that fall into Class 3 are identified in Appendix I to 40 CFR Part 270 and discussed more fully in section IV.C of this preamble.

The Committee agreed that, because Class 3 modifications involve substantial changes to facility operating conditions or waste management practices, they should be subjected to the same review and public participation procedures as permit applications. In addition, the Committee agreed that the public should have the opportunity to meet with the facility owner/operator and comment on the modification request before the Agency developed a draft permit. The specific procedures agreed upon by the Committee for Class 3 modifications have been proposed at 40 CFR 270.42(c).

The first steps in the application procedures for Class 3 modifications are similar to the procedures for Class 2. Under proposed § 270.42(c)(1), the permittee must submit a modification request to EPA indicating the exact change to be made to the permit; identifying the change as a Class 3 modification; explaining why the modification is needed; and providing applicable information required by 40 CFR 270.13 through 270.21 and 270.62. As with Class 2 modifications, the permittee is encouraged to consult with EPA before submitting the modification request.

As agreed upon by the Committee, the permittee would also be subject to essentially the same public notice and meeting requirements for Class 3 as for Class 2 modifications. Proposed § 270.42(c)(2) would require the permittee to notify persons on the facility mailing list concerning the modification request. This notice would have to occur on the date of submission of the request to the Agency, and would have to contain the same information as the Class 2 notification, except that it would include an announcement that a second public meeting might be held if a written request were made. Proposed § 270.42(c)(4)(i) would require the permittee to hold an informational public meeting, just as in Class 2. However, proposed § 270.42(c)(4)(ii) adds a provision that the permittee may hold a second meeting at his or her own discretion, or if requested in writing by a member of the public.

The Committee agreed that if the permittee chose to conduct a second public meeting, he or she would be required to notify the public in accordance with proposed § 270.42(c)(4)(ii)(A)–(E). The purpose of the meeting would be to allow the permittee and the public to further discuss issues raised in the first meeting and, if possible, to resolve them. In many cases, the Committee believed, this second meeting might lead to a revision to the permittee's modification request. The meeting would have to be held no fewer than 15 days after the notice and no fewer than 15 days before the end of the comment period. If it were not possible to hold the meeting at least 15 days before the end of the comment period, the permittee would be required to extend the comment period. The Committee also agreed that, to facilitate the resolution of issues, the permittee might employ a neutral facilitator to chair the meeting. In this case, the permittee and the Agency would have to agree on the selection of the facilitator. Like the first meeting, the second meeting would not have any official status.

Finally, the Committee agreed that the Agency would use the permit issuance procedures of 40 CFR Part 124 for Class 3 modifications after the conclusion of the 60-day (or extended) comment period. Thus, the Agency would have to prepare a draft permit modification, publish a notice, allow an additional 45-day public comment period on the draft permit modification, hold a public hearing on the modification if requested, and issue or deny the permit modification. In addition, the Agency would be required to consider all written comments received by the Agency during the public comment period announced by the permittee at the time of the modification request.

4. *Temporary Authorizations* The Committee also agreed that EPA should have the authority to grant a permittee temporary authorization, without prior public notice and comment, to conduct activities necessary to respond promptly to changing conditions. In granting a temporary authorization, under the Committee agreement, the Agency would have to find that the modification was necessary to: (i) Facilitate timely implementation of closure or corrective action activities; (ii) facilitate timely management of a newly regulated waste at the permittee's facility; (iii) avoid disrupting ongoing waste management activities at the permittee's facility; (iv) enable the permittee to respond to sudden changes in the types or quantities of wastes being managed at the facility or (v) carry out other changes to protect human health and the environment. Temporary authorizations could be granted for any Class 2 modifications that met these criteria, or for a Class 3 modification that met the criteria and that was necessary to: (i) Implement corrective action or facility closure activities, (ii) manage a newly regulated waste, or (iii) provide improved management or treatment of a waste already listed in the permit.

EPA has proposed these criteria for temporary authorization in § 270.42(e). However, the Agency believes that it may be appropriate to drop item (ii), the management of newly regulated waste, from the list. Elsewhere in the negotiated agreement, the Committee agreed on a special modification procedure for facilities handling newly listed or identified wastes. This procedure would allow the owner/operator to handle the newly regulated waste as a Class 1 modification, pending the review of a Class 2 or 3 modification request. The Agency has proposed this procedure in § 270.42(g) (see section IV.B.7 of this preamble). The Agency, therefore, is proposing a dual approach: A facility owner/operator would have the option of seeking a modification to handle a newly listed waste either as a temporary authorization or under the special procedures of § 270.42(g). Although the Committee agreed on including both approaches during its negotiations, EPA believes that the special procedures of § 270.42(g) are generally more appropriate for newly listed wastes. (This point is explained more fully in section IV.C.7 of the preamble.) Therefore, the Agency specifically solicits comments on whether it should retain changes necessary to handle newly listed wastes as a criterion for temporary authorizations.

In addition, EPA believes that other criteria not addressed by the Committee may be appropriate justifications for temporary authorizations. For example, EPA solicits comment on whether temporary authorizations should explicitly be allowed for storage or treatment of hazardous wastes subject to land disposal restrictions under 40 CFR Part 268. These restrictions are likely to lead to severe short-term dislocation of waste management systems and a shortfall in capacity. The regulated industry will require flexibility to handle and treat restricted wastes under these circumstances. For these reasons, the Agency recently promulgated a regulation classifying changes to facility permits for storage or treatment of restricted wastes as minor permit modifications, pending review of the changes as major modifications. (*See* § 270.42(p), as amended on July 8, 1987, 52 FR 25760.) If today's proposal

becomes final, the minor modification provision will be eliminated. EPA believes that it may be appropriate to retain the flexibility provided by this rule by allowing non-land-based management of restricted wastes (at least for Class 2 modifications) under temporary authorizations. The Agency solicits comments on this question.

Proposed § 270.42(e) (2)–(4) details the procedures agreed upon by the Committee for granting temporary authorizations. Under these procedures, the permittee must submit to the Agency a request for a temporary authorization describing the activities to be conducted; explaining why the temporary authorization was necessary; and providing sufficient information to ensure compliance with Part 264 standards. In addition, the permittee would be required to notify all persons on the facility mailing list about the temporary authorization request within seven days of the request. For temporary authorizations, however, the Committee agreed that there would be no automatic requirement for public comment or hearings. Instead, only temporary authorizations that were "not of short duration (i.e., permanent) would need to go through either the Class 2 or Class 3 approval procedures." (This issue is discussed later in this section of the preamble.)

Proposed § 270.42(e)(3) would require the Agency to approve the temporary authorization as quickly as practical. In granting the authorization, EPA (or the authorized State) would be required to find that the modification met the criteria for a temporary authorization. The Committee agreed that denial of a temporary authorization request would not prejudice action on the modification request. The denial would not necessarily mean that the activities contemplated by the permittee did not meet appropriate permitting standards; it might only mean that the criteria for a temporary authorization were not met.

Proposed § 270.42(e)(i) specifies that a temporary authorization must be issued for a term of no fewer than 90 and no more than 180 days, and that the authorization could be extended for another 180 days. Although the Committee Agreement specified this requirement, at least one member of the Committee raised the question of whether temporary authorizations should be allowed for a term of fewer than 90 days. EPA emphasizes that the term of the temporary authorization would begin at the time of its approval by the Agency, or at some specified effective date shortly after the time of approval. There would be no requirement, of course, that the authorized activities run at least 90 days, only that they be completed by the end of the authorization. Therefore, the Agency believes that there is no need specifically to allow temporary authorizations to be granted for fewer than 90 days. However, the Agency solicits comments on this issue; specifically, should the Agency have the ability to issue a temporary authorization with a duration of less than 90 days?

As the Committee agreed, the permittee would be required under proposed § 270.42(e)(4) to submit a complete modification request within 60 days of submitting the temporary authorization request. The initial request for a temporary authorization, of course, would have to be substantially complete, and, as required in proposed § 270.42(e)(2), would have to include sufficient information for EPA to determine that the activities would be in compliance with Part 264 standards. However, because of the need for timely action, the facility owner might not have time to provide all material required under Part 270—for example, changes that would be required in supporting documents such as personnel training plans or closure plans. This information would have to be provided as part of a complete modification request within 60 days. As required under proposed § 270.42(e)(4), if EPA did not determine the request to be complete after 60 days, the temporary authorization would be terminated.

The Committee agreed that, if the Agency issued a temporary authorization, it would be required to review the subsequent modification request in the same manner that it would in the absence of a request for a temporary authorization. However, in the case of a Class 2 modification, the Agency would not be required to act on the request until the date the temporary authorization (or the extended temporary authorization) expired. At that time, the Agency would be required to make one of the decisions otherwise required on day 120 for Class 2 modifications. If the Agency failed to make one of those decisions, the activities described in the modification would be temporarily authorized without action by the Agency.

It should be noted that this scenario could allow a significant amount of time to pass before the Agency is required to make a final decision on the permit modification request. For example, at the end of the extended temporary authorization, the Agency may grant another temporary authorization, or an automatic 180-day temporary authorization may occur in the absence of a decision. In either case, the final Agency action on the request could be delayed for this additional period of time. EPA believes that it is in the interest of the permittee, the public, and the permitting agency to render timely final decisions on these Class 2 permit modification requests. The Agency invites comment on the decision timeframes that would be established by this approach. Specifically, should the Agency be required to make its decision by the end of the initial temporary authorization, or should there be a fixed time period (e.g., 180 days) for the Agency to make its decision?

As stated earlier, the Committee agreed that Class 2 and 3 public participation procedures would be required only for "permanent" activities conducted under a temporary authorization. The Committee did not provide EPA specific guidance on how to interpret this directive. The Agency, however, believes that any activity that continues beyond 180 days (the maximum term of an initial temporary authorization) should be considered "permanent" and should require the full public participation requirements of Class 2 or 3 modifications, as appropriate. This approach is proposed in § 270.42(e)(3)(iii).

Under this proposal a permittee could operate under a temporary authorization for up to 180 days without providing a formal opportunity for public comment and without holding the informational meeting required for Class 2 and 3 modifications. These steps would be required before the activities continued beyond the 180-day term of the authorization. It should be emphasized, however, that even short-term activities could not be conducted under this authority without public knowledge. As explained above, in the case of all temporary authorization requests, the permittee would be required to notify the public within seven days of the request. Therefore, the public would have an opportunity to raise any issues or concerns it had with the permittee or the Agency, and it could appeal any Agency decision to grant a temporary authorization.

In summary, temporary authorizations may occur in the following situations

1. The permittee requests and the Agency approves a temporary authorization for short-term activities. This temporary authorization is renewable only if the permittee has complied with the notification procedures of the appropriate Class 2 or 3 modification process.

2. The permittee requests and the Agency approves a temporary authorization while the Agency and the public are reviewing the Class 2 or 3 modification. This temporary authorization is renewable once, for up to 180 days.

3. The Agency approves a temporary authorization after public review of a Class 2 modification request but before the Agency issues the final permit modification. This temporary authorization is not renewable.

4. An automatic temporary authorization is granted where the Agency fails to make a decision on a Class 2 modification request within prescribed deadlines.

EPA believes this approach provides a reasonable balance between the public's right to know of and comment on activities at permitted hazardous waste facilities and the facility owner/operators' need to implement certain changes rapidly. The Agency also believes that this approach allows a reasonable implementation of the Committee's agreement that full public participation was not necessary for short-term activities conducted under temporary authorizations at hazardous waste facilities.

More generally, the Agency believes that the temporary authorization procedure approved by the Negotiating Committee will provide important flexibility to permitted hazardous waste facilities, without sacrifice to public health or the environment. In fact, because temporary authorizations are designed specifically for activities necessary to improve management of hazardous waste, or to conduct timely closures and corrective actions, this authority should reduce actual risk and promote safe handling of wastes. For this reason, the Agency believes that the temporary authorization procedure will greatly benefit the regulated industry, regulating agencies, and the public.

5. Other Modifications

As explained later in this preamble, the Agency has chosen to codify the list of permit modifications developed by the Negotiating Committee. This approach leaves open the question of how to handle modifications that have not been listed in one of the three categories.

While the Committee did not specifically address this question, the Agency is proposing an approach in § 270.42(f). Under this proposal, a facility owner/operator wishing to make a permit modification not included on Appendix I could submit a Class 3 modification request, or alternatively ask the Agency for a determination that Class 1 or 2 modification procedures should apply. In making the determination, the Agency would consider the similarity of the modification to modifications listed in Appendix I, and would apply the general definitions of Class 1, 2, and 3 modifications developed by the Negotiating Committee. Furthermore, the Agency would notify persons on the facility mailing list of its decision to classify the modification as Class 1, 2, or 3, and the public and the permittee would have the right to appeal the classification, as well as EPA's decision to grant or deny the request itself. Finally, EPA intends to monitor decisions by permitting authorities (both the EPA Regional offices and authorized states) on modification request classifications and will periodically amend Appendix I of this regulation to include these classifications.

As an alternative, the Agency considered requiring the Class 3 process for any modification that did not appear in Appendix I, and periodically amending the regulations to add new modifications. EPA, however, has rejected this approach as unwieldy and as significantly undermining the flexibility provided by this proposal. The Negotiating Committee and the Agency have made a concerted effort to develop a comprehensive list of permit modifications in Appendix I. However, experience has shown that a complete list is not possible, and that there will inevitably be many requests for modifications not found in the Appendix. Thus, unless a simple and flexible process is developed for addressing unclassified modifications, today's proposal will provide only limited relief. The Agency believes that proposed § 270.42(f) provides such an approach.

6. Permit Modification Appeals

The Committee agreed that members of the public and the permittee should have the same rights to appeal Agency decisions on permit modifications as they have to appeal permits. The proposal would require EPA to notify the public of its decisions on permit modification requests, including the automatic authorization of permit modifications through the default provision. It would also explicitly allow the public to appeal these decisions under the procedures of 40 CFR Part 124. These requirements are proposed in § 270.42(d).

7. Newly Listed or Identified Wastes

Under current regulations, facility owner/operators must secure a major permit modification before handling hazardous wastes not listed in the facility permits. This requirement applies not only to hazardous wastes new to a facility, but also to wastes that a facility is already handling that are newly listed or identified by EPA as hazardous. Thus, if a permitted facility is handling a solid waste that EPA lists as hazardous under section 3001(b) of RCRA or that possesses characteristics that EPA identifies as hazardous under sections 3001 (g) and (h), the facility's permit must undergo a major modification to allow it to continue to handle the waste. This modification might simply entail adding the new waste to the permit, because the facility had been handling the waste in an already permitted unit. Alternatively, it might entail adding to the permit storage or treatment tanks, surface impoundments or landfills, incinerators, or other units, because the waste had been handled in an unpermitted unit.

The Committee agreed that permit modifications necessary to handle newly listed or identified wastes present a special case and do not fit readily into the established procedure. In particular, the Committee recognized the severe disruption that a lengthy permit modification process might cause a facility already handling a newly regulated waste—especially if the facility had to go through a Class 3 modification to continue to handle the waste. The Committee also acknowledged a potential inequity between permitted and interim status or unpermitted facilities handling newly regulated wastes. Under RCRA, previously unregulated facilities can gain interim status, allowing them to continue to handle the waste, simply by submitting a Part A application and complying with 3010 notification requirements. Interim status facilities would be able to continue to handle newly listed or identified wastes through a change in interim status without a detailed permitting review by the Agency. Permitted facilities, however, would require a major permit modification. As a result, permitted facilities would be penalized when it came to handling newly listed or identified wastes.

For this reason, the Committee agreed that special procedures should be developed for modifications involving newly listed or identified wastes, and it provided general guidance to EPA on developing an approach to this class of modifications

- The permittee would submit a Class 1 modification request at the time the waste became subject to the new requirements.

• The permittee would comply, to the extent practicable, with Part 264 requirements, and where this was not practicable with Part 265 requirements.

• In the case of Class 2 and 3 modifications, the permittee would submit the appropriate modification request within a specified time period.

The Committee also agreed that, where new wastes or units are added to a facility's permit under this approach, they would not count against the 25 percent expansion limit for Class 2 modifications.

EPA is today proposing this approach in § 270.42(g). EPA's proposal would allow permitted facilities to continue to handle newly listed or identified wastes—either in permitted or unpermitted units—if they were handling them at the time of publication of the final rule listing or identifying the new waste. Furthermore, as the Committee agreed, the permittee would be required to submit a Class 1 modification at the time the waste became subject to the new listing or identification (that is, on the effective date of the rule); the permittee would have to comply with Part 265 standards and to the extent practicable with Part 264; and for Class 2 or 3 modifications he or she would have to submit a complete permit modification request within 180 days of the effective date.

The Agency considered limiting these special modification procedures to facilities that were handling wastes on the effective date of the final rule (which under RCRA would be six months after publication), rather than the date of publication. EPA has tentatively rejected this approach, because it would provide an opportunity for permitted facilities to introduce new wastes after the exact scope of the listing was known but before the rule became effective. In this way, facilities could circumvent full permit modification procedures. However, EPA acknowledges that its proposed approach does raise equity questions, because interim status and unpermitted facilities under current regulations and statutory requirements would be free to expand capacity up until the effective date of a listing or identification rule.

The Negotiating Committee did not provide specific guidance to EPA on the amount of time that the permittee should be given to submit a complete application. However, the Agency believes a period of 180 days is appropriate because it is consistent with the call-in period for Part B permit applications for interim status facilities. EPA believes that less time may be inadequate in many cases, particularly where a new unit, such as an incinerator or a surface impoundment, is involved. In the case of a surface impoundment, for example, the permittee might in some cases be required to install monitoring wells and take other steps to provide a complete application. For this reason, EPA believes that 180 days is an appropriate period.

As discussed earlier, EPA recently proposed a rule that would allow the handling of newly listed or identified wastes as a minor modification, pending action on a major modification (52 FR 30570, August 14, 1987). The Agency intends to promulgate that rule, regardless of today's proposal, to provide earlier relief to the regulated industry. However, when today's proposal is issued as final, it will supersede that rule.

One major difference between the August 14 proposal and today's proposal should be noted. The August 14 proposal would allow facilities to handle newly regulated wastes through minor permit modification procedures, which require prior EPA approval, while today's proposal would not require prior EPA approval. The permittee would simply have to notify EPA and the public under the Class 1 procedures to put into effect a modification involving a newly listed or regulated waste. The August 14 proposal did not contemplate an approach like the one presented in today's proposal since the intent of the earlier proposal was to adhere to the framework of the current minor modification regulations, which does not provide for modifications without prior Agency approval. EPA believes that the approach in today's proposal is more equitable, because unpermitted facilities and, for the most part, interim status facilities would not require prior Agency approval before continuing to handle a newly listed or identified waste. Furthermore, today's approach is consistent with the Negotiated Committee's agreement.

8. Publication of Permit Modification List

The Committee also agreed that EPA or an authorized State would maintain a list of approved permit modifications and periodically publish a notice that the list is available for review. The Committee did not specify how often such a notice would have to be published; however, EPA believes that the notice should be published once a year. The Agency considered a shorter interval, but believes more frequent publication to be unnecessary and unwieldy. The public notice will only serve as a reminder to the public—or as a notice to new residents—that an updated list is available for review. The Agency believes that annual publication of this notice would provide the public adequate opportunity for oversight of how the Agency was running the permit modification program. Members of the public interested in a closer review could follow the Agency's actions on a site-specific basis.

C. Classification of Permit Modifications

The Committee decided that it was important to identify in the regulation what types of facility changes constitute Class 1, 2, and 3 modifications. Therefore, the Committee developed an extensive classification of possible changes that would necessitate permit modifications. This classification is presented in Appendix I of Part 270.

The Appendix I classification list generally follows the organization of the facility standards in Part 264. The list is designed to be self-explanatory, and, with a few exceptions noted in the preamble discussion below, represents Committee agreement. Therefore, the following preamble discussion will only address items where some background may be useful, suggestions that did not receive Committee consensus, or substantive additions that EPA is proposing.

In adopting the Committee's permit modification classification list for inclusion in Part 270, the Agency needed to make some minor changes to the list. However, the Agency believes that these changes are only minor structural reorganizations or, in some cases, minor editorial changes to make the wording more precise. EPA has also added a few substantive items to the list that the Committee did not address or resolve. All of EPA's substantive additions are identified and discussed in the preamble.

The Agency specifically requests comments on the proposed classification of Class 1, 2, and 3 modifications. Commenters should address the questions of whether the specific modifications listed in Appendix I are clearly described, whether specific modifications are appropriately classified, and whether other modifications should be listed.

1. General Permit Provisions

The items identified under "General Permit Provisions" in Appendix I are primarily derived from the conditions that are applicable to all permits as specified in §§ 270.30–270.33. Other general changes are also included in this section that are administrative in nature, or that recur throughout the Part 264

regulations but would more simply be addressed in one place (e.g., frequency of reporting).

The Committee agreed that administrative and informational changes and correction of typographical errors are of little concern, and are primarily necessary to maintain a current permit document. One Committee member suggested that correction of minor factual errors should also be included as a Class 1 change, but the Committee did not have time to address this suggestion. The Agency requests public comment on whether correction of minor factual errors should be added to this list as a Class 1 change, and if so, how "minor factual errors" should be defined.

The Committee also agreed that it is important that the permittee be able to make routine equipment replacements that are necessary for the continued operation of the facility. Equipment that frequently needs replacement includes pumps, pipes, valves, incinerator fire-brick, instrument readout devices. In most cases, such replacements should not even require a permit modification since the permit should acknowledge them as ongoing maintenance activities. However, some Committee members offered examples where permits specified a particular piece of equipment, including the manufacturer's name and the model number of the item. Such an item may not be available at a later date when it needs replacement. (Some permit conditions may inadvertently create such restrictions by incorporating the Part B permit application by reference.) The Committee decided that when a permit modification for such a change is needed, it would be a Class 1 change. The Committee further agreed that the facility should be able to upgrade these kinds of ancillary equipment without prior approval to take advantage of better designs or more suitable products, so long as the new equipment is "functionally equivalent" to the equipment it replaces. (The definition of "functionally equivalent" is discussed later in the preamble.) These would also be Class 1 changes.

The proposal would also allow changes in interim compliance dates in schedules of compliance with Director approval. Where such changes would be likely to delay the final date of compliance, it would not qualify as a Class 1 change.

2. General Facility Standards

The "General Facility Standards" portion of Appendix I encompasses changes that affect the general standards and requirements that apply to all hazardous waste facilities (Subparts B–E of Part 264). These changes primarily involve the various plans that must be maintained by the facility (e.g., contingency plan, training plan) and are self-explanatory.

3. Ground-Water Protection

Subpart F of Part 264 specifies the RCRA system for protecting ground-water. Permitted facilities subject to ground-water monitoring requirements have very detailed permit conditions regarding the hazardous constituents to be monitored; concentration limits of hazardous constituents that trigger subsequent actions; and the number, location, depth, and design specifications of monitoring wells. The Committee agreed to a classification of typical changes, incorporated into Appendix I, that may be needed in the ground-water monitoring program at a facility.

The classification of changes in ground-water monitoring in Appendix I represents a compromise reached by the Committee. EPA wishes to emphasize, however, that it considers ground-water monitoring to be a critical element of permits for land-based units, and that ground-water monitoring systems require close attention by the Agency. Many of the specific changes categorized as Class 2 in this section might under some circumstances constitute significant changes in the ground-water monitoring system—such as change in point of compliance; change in the number, location, or depth of wells; and reduction in the number of hazardous constituents analyzed for the assessment program. Permittees should understand that, if a permit modification request did not provide documentation that the modification would fully comply with Part 264 standards and would not reduce the effectiveness of the ground-water monitoring system, EPA or an authorized State would be obliged to deny the permit modification request. (Alternatively, the Agency could extend the review period, with the approval of the permittee.) Therefore, EPA expects that the permittee will consult closely with the regulating agency before requesting such modifications, except in the most straightforward of cases.

EPA believes that Class 2 is an appropriate category for these types of changes regarding ground-water monitoring, because of the requirement that Class 2 modification requests indicate compliance with Part 264 requirements and because—once ground-water monitoring systems have been established and approved as part of the original permit—changes in the systems will generally be minor and technical. In fact, EPA believes that most changes will be made to "improve" permitted systems, because of new information, technology, or other considerations. Therefore, the Agency believes that public health and the environment will be best served by an expedited approval procedure for these kinds of changes.

The Agency, however, specifically solicits comments on the Committee's categorization of these permit modifications as Class 2. The Agency also solicits comments on whether certain modifications related to ground-water monitoring should be categorized as Class 1. For example, several of the modifications appear to be technical in nature, easily reversible, and generally of limited interest to the public—for example, changes in sampling or analysis procedures or changes in statistical procedures. The Agency solicits comments on whether such changes should be allowed as a Class 1 with prior Agency approval.

EPA has introduced several changes to the Committee's ground-water protection list. First, § 264.98(h)(4) requires the facility to request a permit modification within 90 days when it must establish a compliance monitoring program. The Committee agreed that this should be a Class 2 permit modification. However, the Committee did not address permit modifications similarly required by § 264.99(k) for changes to an established compliance monitoring program when the program no longer satisfies the specified requirements. The Agency is proposing also to classify these changes as Class 2 modifications. We believe that changes to a compliance monitoring program should be subject to the same level of Agency review and public participation required for the establishment of the compliance monitoring program. (*See* item C(9) in Appendix I.) The Agency requests comments on this addition to the Committee agreement.

Second, the Committee inadvertently failed to address the pre-HSWA corrective action activities at regulated units that are currently identified as major modifications. (HSWA corrective action is discussed in section IV.C.8 of the preamble.) Therefore, the Agency is proposing to add a new item C(10) to Appendix I to address the addition of a corrective action program when required by § 264.99(i)(2) or changes to such a program as required by § 264.100(h). Part 264 requires facilities to submit a permit modification request in both of these cases. The Agency believes that these particular corrective action activities are of major concern

since they are not called for unless there is evidence that the ground-water protection standard is being exceeded. Therefore, the Agency is proposing to categorize them as Class 3 permit modifications. This classification is consistent with earlier Committee deliberations on corrective action and ground-water monitoring. We invite comment on including this additional item in Appendix I.

4. New Wastes in a Unit

The use of the term "new wastes" in the Appendix I list refers to changes involving the introduction of hazardous wastes to units that are not permitted to handle these wastes. In other words, the facility may be seeking to accept wastes that were not previously identified in the permit, or it may already be managing the waste but would prefer to shift it to a different treatment, storage, or disposal process. Permit modifications for "newly regulated wastes"—those wastes that are newly listed or identified—are treated somewhat differently, as described in section IV.B.7 of this preamble.

The Committee agreed that permit modifications to allow new wastes at a permitted unit should be classified into two general categories. The first situation would involve new wastes that are sufficiently similar to wastes currently authorized at the unit so that no additional or different management practices, design, or process is required. As an example, a unit may be permitted only to treat specific solvent wastes, but may be equally capable of treating other solvent wastes that exhibit similar physical and chemical properties within the same management conditions of the permit. In these cases, the Committee specified that the permit modification should follow the Class 2 process.

The second situation would be where the introduction of a new waste at a unit would require different or additional management practices, design, or process in order to properly manage the waste—for instance, if the new waste was reactive or ignitable and the permit conditions did not anticipate that such wastes would be managed in the unit. The Committee agreed that these circumstances would require a Class 3 permit modification.

For each type of unit in Appendix I, the Committee defined general criteria as discussed above to determine whether permit modifications involving the management of new wastes represent a Class 2 or a Class 3 change. Although these criteria are general in nature, the Agency believes that they would be useful and appropriate in delineating between Class 2 and Class 3 modifications.

5. General Approach to Defining Unit-Specific Changes

This section of the preamble describes the Committee's classification of permit modifications involving the various types of hazardous waste management units at a facility. In general, the Committee addressed for each type of unit: (1) Changes to or addition of units that affect the facility's capacity, (2) changes to units that do not affect facility capacity, (3) replacement of units, (4) introduction of new wastes into a unit, and (5) changes to the waste management practices involving the unit. Also, the Committee identified additional changes that were appropriate for specific units.

i. *Tanks and containers.* The permitting standards for containers and tanks are found in Part 264 Subparts I and J. Because of the similarities of the classifications that the Committee developed for these units, they are discussed together. Furthermore, EPA made a structural change to the Committee's classification list in that it combined the "tank storage" and "tank treatment" sections into a single section that encompasses all of the activities identified by the Committee. The Agency believes that this arrangement is preferable because it eliminates possible confusion created by duplicative language and because the Part 264 standards do not differentiate between tanks used for treatment and tanks used for storage. This format change does not affect the substance of the Committee's classifications.

The Committee decided that tank system and container changes or additions resulting in a capacity increase of 25 percent or less should qualify as a Class 2 modification. This arrangement would allow modest capacity growth at a facility without the procedures currently associated with major modifications, but with an appropriate level of public notice and participation. Any change leading to an increase of more than 25 percent would require a Class 3 modification (except for certain specific unit operations described later in this section).

The 25 percent limit is based on the initial permitted capacity for tank systems or containers. As an example, a facility that has a permit for both tank systems and containers may bring on additional tank systems as Class 2 modifications until the cumulative increase in tank capacity equals 25 percent of the tank capacity specified in the permit. Similar changes may be made involving container units, based on the initial container capacity. Once the 25 percent limit is reached, all subsequent modifications involving capacity increase for the specific type of unit would follow the Class 3 process.

Another example that illustrates the limited nature of this Class 2 provision would be where a facility's permit specifies extensive container storage, but there is no provision for tank storage. In this case, the container storage operation may be expanded as a Class 2 change subject to the 25 percent limit, but addition of tanks would be a Class 3 modification since there was no permitted tank capacity.

The Committee also discussed the addition of certain tanks that perform particular treatment activities—neutralization, dewatering, phase separation, or component separation—that are fairly elementary physical processes. These unit operations are relatively simple in design and are well suited to use as mobile treatment units (MTUs). Furthermore, it was recognized that there is growing interest in the waste management field for using such MTUs since they provide industry significant flexibility in selecting among treatment technologies, in pretreating wastes before final treatment, and in reducing waste volume before shipping. (Note that EPA recently proposed amendments to the RCRA permitting program to remove regulatory impediments to using MTUs in treating hazardous wastes. 52 FR 20914, June 3, 1987.)

For these reasons, the Committee decided that the temporary (i.e., up to 90 days) addition of tanks to perform neutralization, dewatering, phase separation, or component separation operations may merit a separate classification from tanks intended for other uses. However, the Committee could not reach consensus on the appropriate modification class for these units. Initial discussions of the issue centered on treating these changes as Class 1 modifications, and some members of the Committee preferred this approach. Most Committee members believed that temporary use of these particular tanks should be assigned to Class 1 but should require Agency approval prior to operation. However, there were a few members who believed that there may be circumstances where the addition of such units would merit a Class 2 ranking. Therefore, the Committee decided that EPA should solicit public comments on these various approaches and consider the comments when developing the final rule.

In today's proposal, the Agency is indicating that the addition of "new treatment tanks to be used for up to 90 days for neutralization, dewatering, phase separation, or component separation" is a Class 1 modification but requires prior Agency approval. (*See* item G(1)(d).) While the temporary use of these units does not appear to warrant imposing the Class 2 process, EPA does believe that Agency review of the proposed use of these tanks is important. Agency approval will ensure that the new units will be governed by the applicable Part 264 standards (and the Part 269 air emissions standards, when promulgated). EPA reiterates that the Committee did not agree on this classification; however, we believe that the public will benefit from seeing specific proposed language in Appendix I. EPA particularly invites comments on these issues to assist in its final decision.

As indicated in item G(1)(c), the addition of units conducting these four specific treatment operations for more than 90 days is a Class 2 modification, without limitation to the resulting capacity increase. This will allow facilities to institute these simple operations even if their current permitted treatment capacity is limited.

Tank replacements were designated by the Committee as Class 1 changes. (*See* item G(3).) Committee members acknowledged it may not always be possible to replace a tank with another tank of exactly the same capacity. Therefore, the Committee agreed that the tank replacement provision should allow a 10 percent variation in the size of the replacement tank, but it would not authorize the use of any additional capacity gained in this fashion. As discussed above, increases in the permitted tank capacity would require a Class 2 modification (if limited to 25 percent or less). (For example, if a 5,000-gallon tank is replaced by a 5,500-gallon tank, the replacement would be a Class 1 modification if the tank will be used to treat or store only 5,000-gallons or less. The facility could use the entire 5,500-gallons after a Class 2 modification.) The 10 percent variation would further be limited to a maximum of 1,500 gallons since tanks of 15,000 gallons and more are usually made to order and therefore would not have to deviate from the original tank size.

The Agency has proposed this modification as agreed upon by the Committee. However, it questions whether it is necessary to prohibit the owner/operator's use of the extra 10% capacity in replacement tanks under Class 1 modifications. It believes this provision may be difficult to enforce and will provide limited if any additional protection to human health and the environment. The Agency specifically solicits comments on this issue.

ii. *Surface impoundments.* The surface impoundment permitting standards of Part 264 Subpart K are designed to prevent any migration of wastes out of the impoundment to adjacent soil, ground-water, or surface water. The Committee decided to allow Class 2 permit modifications only under the following circumstances involving surface impoundments: (1) Changes to an impoundment that do not increase the unit's capacity and that do not modify the liner or leak detection system, (2) changes to management practices at the impoundment, and (3) the addition of new wastes under certain circumstances (as discussed in section IV.C.4 of the preamble). Class 3 permit modifications would be required for other changes, such as increased capacity or replacement of an impoundment.

iii. *Waste piles.* The Committee developed separate permit modification categories for two general types of waste piles. The first type of waste pile is one that is not inside or under a cover providing protection from precipitation, or that otherwise does not qualify for the exemptions provided in § 264.250(c). Such units are referred to as "unenclosed waste piles," and are treated in the same manner as landfills for purposes of permit modifications in today's proposal. Since unenclosed waste piles are subject to essentially the same design, operating, monitoring, and inspection requirements as landfills, the Committee decided that the permit modification requirements for these waste pile units should also be similar. The specific landfill permit modification requirements are discussed in the following section.

The second type of waste pile unit is the "enclosed waste pile"—i.e., waste piles that comply with § 264.250(c). Such waste piles are exempt from the ground-water monitoring requirements of Subpart F and from the § 264.251 requirements for liners, leachate collection systems, run-on and run-off control, and wind dispersal control. Section I of the Appendix lists the modifications that the Committee designated for enclosed waste piles.

Note that item I(1)(b) provides for unit changes or additions resulting in a capacity increase of 25 percent or less as a Class 2 modification. This is the same modification as allowed for tank and container units. Further discussion of the operation and limitations of this Class 2 change can be found in section IV.C.5.i above.

iv. *Landfills.* The permitting standards for landfills are found in Part 264, Subpart N. The Committee's list of permit modifications that are appropriate for landfills are presented in section J of Appendix I. (As discussed above, these modifications would also apply to unenclosed waste piles.)

The Committee specified most changes at landfill facilities as Class 3 modifications. Class 2 changes are indicated only for: (1) Limited unit modifications that would not affect a liner, leachate collection or detection system, run-off control or final cover system, (2) changes to management practices at the landfill, and (3) the addition of new wastes under certain circumstances (see section IV.C.4 of the preamble).

v. *Land treatment.* The list of modifications to land treatment facilities presented in section K of Appendix I is fairly extensive, reflecting the detailed regulatory provisions governing these facilities in Part 264, Subpart M. The modifications identified relate primarily to changes in land treatment operating practices, monitoring of the unsaturated zone, and the treatment demonstration. The items listed are quite specific and self-explanatory.

Currently, three types of permit changes for land treatment facilities are minor modifications. First, § 270.42(l) allows a minor modification for minor changes to the treatment program requirements for the purpose of improving treatment of hazardous constituents. Since the elements of the treatment program (identified in § 264.271) cover a wide range of possible permit conditions, this minor modification raises the question of what constitutes a "minor change" that "improves treatment of hazardous constituents." Today's proposal does not contain a provision similar to § 270.42(l), but instead identifies many potential changes to elements of the treatment program and classifies each one separately. However, the Committee agreement assigned either a Class 2 or 3 modification level to all such changes, thereby requiring a more extensive approval process than in the current system, if the modification were to qualify as minor under this provision. The Agency believes that the Committee may have inadvertently eliminated some land treatment changes that are currently allowed as minor modifications and for which a Class 1 modification with prior Director approval would be appropriate. Therefore, EPA is particularly interested

in comments on the relation of this new classification to the current provision of § 270.42(l).

The second land treatment minor modification is for a minor change to a permit condition to reflect the results of a treatment demonstration (§ 270.42(m)). This provision is retained in today's proposal, but it is a Class 2 modification and includes the additional condition that the performance standards must still be met (item K(15)). Therefore, such changes may require more time for approval under today's proposed system. The Agency welcomes comment on this new classification.

Finally, a third minor modification category allows a second treatment demonstration when the results of the first demonstration are not conclusive (§ 270.42(n)). This provision is essentially unchanged since it is identified as a Class I change that requires prior director approval (item K(16)).

The Agency is also proposing conforming changes to the land treatment demonstration permitting provisions of § 270.63. Section 270.63(d) currently specifies procedures for modifying the second phase of a land treatment permit based on results of field tests or laboratory analyses; however, these procedures are designed, in part, to provide an opportunity to appeal the Director's decision on a minor modification to the second phase permit. Since today's proposed modification approach provides for the appeal of any permit modification (*see* discussion at IV.B.6 above), there is no need to specify special appeals procedures. Therefore, an amendment to § 270.63(d)(2) is proposed that would remove the inappropriate reference to minor modifications. In addition, minor conforming changes are included by deleting the reference to minor modification in section (d)(1), and combining existing section (d)(3) with (d)(1) for simplicity.

vi. *Incinerators.* Permits for incineration facilities specify operating requirements that are established on a case-by-case basis to ensure that the incinerator will comply with the performance standards of Part 264, Subpart O. Usually the operating requirements are defined after a trial burn is performed in accordance with § 270.62. In considering the various changes that may be needed at incineration facilities, the Committee also had to determine when changes in trial burn plans may be necessary. Section L of Appendix I contains the result of the Committee's deliberations on incinerators.

Items L(1) (a) and (b) address modifications to incinerator units that result in capacity increases. Measures of incinerator capacity commonly used in permits are (1) Thermal feed rate, (2) waste feed rate, or (3) organic chlorine feed rate. A Class 2 permit modification may be obtained for capacity increases up to 25 percent; beyond that a Class 3 is required. Item L(1)(c) specifies particular unit modifications that the Committee believed should be treated as Class 3; even if these changes result in less than a 25 percent capacity increase, they would still require the Class 3 approval process. Furthermore, all of the changes identified in item L(1) would require trial burns unless the Director decided that the information that would be gained through the trial burn could be reasonably developed through other means.

The Agency would like to point out that the trial burn requirements specified by the Committee for item L(1) have been slightly altered in today's proposal. The Committee agreement required trial burns for the item L(1) changes just discussed, but it did not allow the Director to waive this requirement if the permittee could make an acceptable demonstration that the performance standards would be met. Current EPA requirements pertaining to trial burns allow substitute demonstrations in lieu of trial burns under certain circumstances—normally where data are available from operational or trial burns at similar units. (See §§ 270.19(c), 270.62(b)(5), and 264.244(c).) The Agency does not believe that the Committee intended to foreclose this alternate demonstration, so the language has been changed to be consistent with existing incinerator regulations. EPA similarly adjusted other items where the Committee language appears (e.g., items L(4)(a) and L(5)(a)).

Item L(2) addresses changes to incinerator operating or monitoring requirements that would not be likely to affect compliance with the performance standards. Examples of these Class 2 changes include modification of the waste feed systems, quench systems, kiln refractory, or control instrumentation. The Director may require a trial burn if he or she believes there is a possibility that the modification could affect the capability of the incinerator to meet performance standards or could significantly change the operating conditions.

Changes to operating requirements are identified in item L(4). The Committee designated as Class 3 modifications those alterations of operating requirements that relate to the unit's capability to meet the performance standards. Changes to other operating requirements could be made under the Class 2 process. Trial burns may be required for the changes listed in item L(4)(a).

Due to the nature of the trial burn and shakedown periods for new incinerators, changes often need to be made in the trial burn plan or in the interim permit conditions that apply to the incinerator before and immediately after the trial burn is conducted. Such changes are outlined in item L(6). Note that items L(6) (b), (c), and (d) are essentially unchanged from the current minor modifications in 270.42 (k), (j), and (i), respectively.

The Agency added item L(7) to the list of incinerator changes developed by the Committee. Where incinerator fuels are specifically identified in the permit, EPA believes that facilities should have the flexibility to use an alternate fuel based on availability and market prices. (For example, substitution of propane for natural gas.) Such changes are considered insignificant and are proposed to be Class 1 modifications.

6. Closure

The closure activities identified in section D of Appendix I stem from Part 264, Subpart G. Since § 264.112(a) specifies that the approved closure plan becomes incorporated as a condition of the permit, any changes to the plan must be made through the permit modification process. The Committee agreed to the classification of specific closure plan changes as presented in Appendix I, item D(1).

The Committee also addressed the possible need to add units to perform closure activities. If the addition of units is already specified in sufficient detail in the approved closure plan, then a permit modification should not be necessary. However, the creation of units not anticipated in the closure plan will require a permit modification to amend the plan (*see* § 264.112(c)). It also raises the issue of the facility undertaking activities that were not initially identified in the permit. In practice, it is not always possible for the permittee or the Agency, at the time of permit issuance, to anticipate the specific methods that will be best suited to close a facility ten or more years in the future. Therefore, the Agency expects that facility owners will frequently introduce units during closure that were not included in the original closure plan.

The Committee decided that adding units to perform closure should carry the same classification as adding the same

types of units for other reasons (discussed in preceding sections of the preamble). However, the Committee did not believe it was necessary to require a Class 3 modification for adding tanks, containers, or enclosed waste piles for closure that result in a capacity increase of more than 25 percent. It was recognized that closure activities are generally of relatively short duration, and therefore capacity increases resulting from the addition of these units to perform closure would be temporary. Items D (2) and (3) in the Appendix I list contain the classification of these closure activities.

The Committee also considered the special case of tanks that perform neutralization, dewatering, phase separation, and component separation. (*See* the earlier discussion on tanks in section IV.C.5.i of this preamble.) As described earlier, the Agency expects these four treatment operations to become increasingly available through the use of MTUs. MTUs are particularly well adapted to cleanup activities and closure of hazardous waste facilities. However, as was the case with the deliberations on the use of these particular tank units for non-closure activities, the Committee could not reach consensus on the appropriate classification for these units when used to perform closure. Therefore, in today's proposal the Agency has indicated that the temporary addition of these specific tank units would be a Class 1 modification but would require Agency approval. (*See* item D(3)(f)). This is consistent with the proposed classification for these same units if used for fewer than 90 days to perform non-closure activities. Again, EPA particularly invites public comments on this approach to assist its final decision.

7. Post-Closure

Permitted fadilities that must conduct post-closure activities must have a post-closure plan in their permits. Once approved, this plan becomes a condition of the RCRA permit (*see* § 264.118(a)).

The Committee agreement identified two types of changes to the post-closure plan, items E (1) and (2) of Appendix I. EPA is proposing to add three additional items to this list that are logical outgrowths of the Committee agreement. The first is the case where a facility requests a reduction to the post-closure care period (item E(3)). The Agency believes that this type of modification could substantially alter the post-closure program, and therefore warrants designation as a Class 3 change.

The two other additions to the Committee list are: (1) Changes in the expected year of final closure (Class 1), and (2) changes in the post-closure plan that need to be made as a result of events occurring at the facility during the active life of the facility, including closure (Class 2). These two types of permit modifications are specifically called for in § 264.118(d)(2). The Committee addressed similar issues regarding the closure plan, so the Agency has merely adopted parallel classifications for these post-closure plan changes (items E (4) and (5)).

8. HSWA Corrective Action

The Committee spent some time considering facility changes that may be needed to implement the corrective action requirements of HSWA. It was agreed that most corrective action activities would fall into the categories of changes already developed by the Committee (Appendix I). Further speculation as to other permit modifications necessary to comply with HSWA corrective action would be premature since a full regulatory program is still being developed. Therefore, the Committee resolved that EPA should develop specific classifications as needed for corrective action when the Agency develops proposed and final rules on the subject.

D. Conforming Changes to Permitting Regulations

Today's proposed changes to §§ 270.41 and 270.42 are based on the Negotiating Committee's agreement and would significantly alter the procedures for facilities to obtain permit modifications. However, the Committee recognized that it could not identify all of the related regulatory changes that would be needed to support the agreement. Therefore, the Committee requested that EPA perform an exhaustive review of the relevant RCRA regulations and propose the necessary conforming changes in this rulemaking. The Agency has identified several other areas in the current RCRA permitting regulations—in addition to §§ 270.41 and 270.42—that it believes would need to be amended to be consistent with the Committee's agreement and the regulatory language in today's proposal. The following discussion briefly explains the additional minor changes to Parts 124, 264 and 270 that are being proposed today.

Section 124.5 generally identifies which permit modifications must follow the full Part 124 permitting procedures. In § 124.5(c) we are proposing to add a reference to § 270.42(c)—procedures for Class 3 permit modifications—to indicate that Class 3 changes must comply with the Part 124 procedures. Section 124.5(c)(3) is modified in today's proposal to remove the reference to RCRA "minor modifications" and replace it with "Class 1 and 2 modifications", indicating that they are not subject to the full permitting requirements.

Part 264 specifies that the permittee must request a permit modification to amend an approved closure plan (§ 264.112(c)) or post-closure plan (§ 264.118(d)). The request must include a copy of the amended plan for approval by the Agency. However, since today's proposal would allow certain changes to closure or post-closure plans as a Class 1 modification, in such cases the permittee would not "request" a modification or seek "approval" of the amended plan. Instead, the permittee would notify the Agency of the Class 1 change, and the Agency may review (and possibly reject) the modification (*See* section IV.B.1 for detailed discussion.) There is no approval action necessary by the Agency for the Class 1 changes to these plans. Therefore, the Agency is proposing minor changes to §§ 264.112(c) and 264.118(d) to allow "written notification" and Agency "review" of Class 1 modifications. Also in Part 264, the comment at § 264.54 is deleted since it describes minor modifications to contingency plans which would be inconsistent with the proposed modification classification.

Several conforming changes are identified for Part 270. First, three definitions are proposed to be added to § 270.2. "Facility mailing list" is defined as meaning the list maintained by the Agency in accordance with § 124.10(c)(1)(viii); this list will be used to notify interested parties of permit modifications (as discussed in section IV.B of this preamble). "Component" and "functionally equivalent component" are included in the definition section to more clearly specify the types of equipment changes that are allowed as Class 1 modifications in accordance with Item A(3) of Appendix I (discussed in section IV.C.1 above).

In a second change to Part 270, the Agency is proposing to add a provision to § 270.4(a) stating "the permit may be modified upon the request of the permittee as set forth in § 270.42." This change is necessary to coincide with the restructuring of § 270.42 to address only permittee-initiated modifications.

Another change is needed in § 270.30(k)(2) since this provision does not allow the permittee to use the modified portion of the facility until a certification is submitted to the Agency indicating the modification is in accordance with the permit and the Agency has had an opportunity to

inspect the modification. Under today's proposed modification scheme, the requirements of § 270.30(k)(2) are not appropriate in many cases, particularly for Class 1 modifications and temporary authorizations. Therefore, the proposed amendment to this provision would allow the use of the modified portion of the facility as long as such use is in conformance with § 270.42.

Finally, the Agency proposes to delete the reference to "minor modification" in § 270.40 (transfer of permits by modification) and § 270.62 (incinerator permits). These provisions continue to reference the permittee-initiated modifications that are available under proposed § 270.42.

V. Other Issues

A. Permit Modification Form

Currently, there is no prescribed format for submitting permit modification requests. The RCRA regulations provide that in the case of a permit modification, the Director may require the submission of an updated application. (*See* § 124.5(C).) Today's proposal would amend § 270.42 to provide a more specific indication of the information that the permittee would have to submit. However, even with these proposed changes, each permittee seeking a permit modification will have to decide the most appropriate way to assemble his or her submission.

Certain members of the Committee suggested that changes at interim status facilities occur routinely, and that correspondence to the Agency is simplified by the use of the Part A permit application form. Of course, as discussed elsewhere in this preamble, the procedures for making changes at interim status facilities are simpler than those for making changes at permitted facilities. However, Committee members still credited the use of the Part A form as contributing to a more efficient process for gaining approval of facility changes. They suggested that a form for requesting permit modifications might serve a comparable function.

The Committee therefore examined the use of a standard form for permit modification requests. Although the final Committee agreement did not prescribe the use of such a form, there was general support for the idea. Members believed that a standard form would accomplish the following objectives:

- Guide the applicant in preparing the modification request;
- Facilitate Agency and public review of the request;
- Serve as the primary vehicle for notification to all persons on the facility mailing list;
- Assist the applicant in assuring that all appropriate parts of the permit have been changed;
- Help the applicant and the Agency to determine the proper modification classification; and
- Identify other permitting requirements that are also affected (e.g., permits for other media, such as air or water).

Information that might be included on a permit modification form would include (1) Facility name, address, EPA ID number, contact person, and phone number; (2) dates of initial permit and subsequent modifications; (3) a brief description of the requested modification; (4) a list of other environmental permits affected (if any); (5) a summary of voluntary public participation activities related to the modification (if any); (6) proposed classification of the modification request; and (7) components of the permit to be modified. The form could provide a list of typical permit components (e.g., contingency plan, ground-water system, closure plan) so that the applicant would merely check a box as to whether or not that item were changed. The Committee believed that the form should not exceed one or two pages. However, explanatory material would have to be attached to the form in most cases.

The Agency solicits comments on the desirability, contents, and format of such a form. In particular, the Agency is interested in whether such a form would be useful; whether it should be optional or required; whether it should be referenced in the regulations (like the Part A form) or presented as guidance; and what information would be useful for the permitting agency, the applicant, and the public. EPA will consider public comments on this issue when deciding whether or not to pursue the development of a permit modification form.

B. Technical Review and Public Education Fund

Several Committee members suggested that a fund should be established to support site-specific citizen education regarding proposed permit modifications. It was recognized that citizens often do not have the technical background to make judgments on the merits of many hazardous waste facility changes. Indeed, the design of these facilities can involve scientific and engineering skills in several disciplines. Consequently, Committee members thought that a general fund would be useful in providing technical support to the public commenting on permit modification requests or, more broadly, on permit applications.

Individual members of the Committee volunteered to serve on an informal working group to address the need for and feasibility of allocating funds for local technical review of permit modification requests and for public education on hazardous waste issues. One of the alternatives that will be investigated is the establishment of a special fund to enable citizens to obtain independent qualified technical experts to evaluate proposed facility changes. EPA believes that this type of evaluation would enable the local citizens to make constructive technical suggestions for improvements or to confirm that the permittee's proposed changes are technically sound and protective of human health and the environment.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (*See* 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA

applies in authorized States in the interim.

B. Effect on State Authorizations

Today's proposal would be imposed pursuant to pre-HSWA authority. Therefore, those standards would not be effective in authorized States, but would be applicable in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than or in addition to those in the Federal program. The amendments proposed in today's rule are considered to be less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent to the provisions contained in today's proposal.

VII. Effective Date

This rule, if promulgated, would be effective 30 days after final promulgation. Section 3010(b) of RCRA provides that regulations concerning permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) provides for a shorter period if the Agency finds that the regulated community does not need six months to comply with the new regulation.

Since the proposed rule is designed to expedite permit modifications requested by the regulated community, the Agency believes that the regulated community will not need six months to come into compliance. Therefore, these amendments, when final, will be effective 30 days after promulgation, as provided under the Administrative Procedures Act.

VIII. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether EPA must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's proposal is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Agency does not believe a Regulatory Impact Analysis is required for today's rule. The proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., at the time an agency publishes any proposed or final rule, it must prepare a regulatory flexibility analysis that describes the impact of the rule on small entities unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendmehts proposed today provide additional flexibility for hazardous waste treatment, storage, and disposal facilities to undertake changes and overall do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 124

Administrative practice and procedure, Hazardous waste, Waste treatment and disposal.

40 CFR Part 264

Corrective action, Hazardous waste, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Permit modification procedures, Waste treatment and disposal.

Lee M. Thomas,

Administrator.

Date: September 13, 1987.

Therefore, it is proposed that Subchapter I of Title 40 be amended as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; Clean Water Act, 33 U.S.C. 1251 et seq.; and Clean Air Act, 42 U.S.C. 1857 et seq.

2. Section 124.5 is amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 124.5 Modification revocation and reissuance, or termination of permits.

* * * * *

(c) *(Applicable to State programs, see §§ 123.25 (NPDES, 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 122.62 (NPDES), 144.39 (UIC), 233.14 (404), 270.41 or 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

* * * * *

(3) "Minor modifications" as defined in §§ 122.63 (NPDES), 144.41 (UIC), and 233.16 (404), and "Class 1 and 2 modifications" as defined in § 270.42 (a) and (b) (RCRA) are not subject to the requirements of this section.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C 6905, 6912(a), 6924, and 6925).

§ 264.54 [Amended]

4. Section 264.54 is amended by removing the comment.

5. In § 264.112, paragraphs (c) introductory text, (c)(1), and (c)(2) introductory text are revised to read as follows

§ 264.112 Closure plan; amendment of plan.

* * * * *

(c) *Amendment of plan.* The owner or operator must submit a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in Parts 124 and 270. The written notification or request must include a copy of the amended closure plan for review or approval by the Regional Administrator.

(1) The owner or operator may submit a written notification or request to the Regional Administrator for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved closure plan whenever:

* * * * *

6. In § 264.118, paragraphs (d) introductory text, (d)(1), and (d)(2) introductory text are revised to read as follows:

§ 264.118 Post-closure plan; amendment of plan.

* * * * *

(d) *Amendment of plan.* The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements in Parts 124 and 270. The written notification or request must include a copy of the amended post-closure plan for review or approval by the Regional Administrator.

(1) The owner or operator may submit a written notification or request to the Regional Administrator for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan whenever:

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

7. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2992, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

8. Section 270.2 is amended by adding the following definitions in alphabetical order:

§ 270.2 Definitions.

* * * * *

Component means any constituent part of a unit or group of unit constituent parts which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple, entire kiln, tank farm scrubber).

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(viii).

* * * * *

Functionally equivalent component means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

* * * * *

9. In § 270.4, the last sentence of paragraph (a) is revised to read as follows:

§ 270.4 Effect of a permit.

(a) * * *

However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42.

* * * * *

10. In § 270.30, paragraph (k)(2) introductory text is revised to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(k) * * *

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in § 270.42, until:

* * * * *

11. Section 270.40 is revised to read as follows:

§ 270.40 Transfer of permits.

Transfers by modification. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 270.41(b)(2) or § 270.42) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

12. Section 270.41 is amended by removing paragraph (a)(5), redesignating existing paragraph (a)(6) as (a)(5), and revising the introductory paragraph and paragraph (a)(3) introductory text to read as follows:

§ 270.41 Modification or revocation and reissuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 270.30), receives a request for revocation and reissuance under § 124.5 or conducts a review of the permit file) he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See 40 CFR 124.5(c)(2).) If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of 40 CFR 270.42. Otherwise, a draft permit must be prepared and other procedures in Part 124 (or procedures of an approved State program) followed.

* * * * *

(a) * * *

(3) *New statutory requirements or regulations.* The standards or regulations on which the permit 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.

* * * * *

13. Section 270.42 is revised to read as follows:

§ 270.42 Permit modification at the request of the permittee.

(a) *Class 1 modifications.* (1) Except as provided in paragraph (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this section under the following conditions:

(i) The permittee must notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice must specify the

changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary.

(ii) The permittee must notify by mail all persons on the facility mailing list, maintained by the Director in accordance with 40 CFR 124.10(c)(viii), about the modification. This notification must be made within 14 calendar days after the change is put into effect.

(iii) Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The 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) Permit modifications identified in Appendix I by an asterisk may be made only with the prior written approval of the Director.

(b) *Class 2 modifications.* (1) For Class 2 modifications, listed in Appendix I of this section, the permittee must submit a modification request to the Director that:

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

(ii) Identifies that the modification is a Class 2 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by 40 CFR 270.13 through 270.21 and 270.62.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Agency and must publish this notice in a local newspaper. This notice must be mailed and published on the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, in accordance with § 270.42(b)(5), and the name and address of an Agency contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with § 270.42(b)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of an Agency contact person;

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

(vi) 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 fewer than 15 days after the publication of the notice required in paragraph (b)(2) of this section and no fewer 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 60 days to comment on the modification request. The comment period will begin on the date the permittee submits the modification request to the Agency. Comments should be submitted to the Agency contact identified in the public notice.

(6)(i) No later than 90 days after receipt of the notification request, the Director must:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request;

(C) Notify the permittee that he or she will decide on the request within the next 30 days; or

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

(ii) If the Director notifies the permittee of a 30-day extension for a decision, he or she must, no later than 120 days after receipt of the notification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request; or

(C) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

(iii) If the Director fails to make one of the decisions specified in paragraph (b)(6)(ii) of this section 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 40 CFR Part 265 and, to the extent practicable, with those of 40 CFR Part 264. If the Director approves, with or without changes, or denies the modification request during the term of the temporary authorization provided for in paragraphs (b)(6)(i), (b)(6)(ii), or (b)(6)(iii) of this section, such action cancels the temporary authorization.

(iv) In the case of an automatic authorization under paragraph (b)(6)(iii) of this section, if the Director has not made a final approval or denial of the modification request within 250 days after receipt of the request, the permittee must at or about that time notify persons on the facility mailing list, 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 Director acts to give final approval or denial of the request by the end of the 180-day period of the temporary authorization, the permittee will receive authorization to conduct such activities for the life of the permit.

(v) If the Director does not approve or deny a modification request before the end of the 180-day automatic authorization period, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under § 270.41 or § 270.42. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 CFR Part 265 and, to the extent practicable, with those of 40 CFR Part 264.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization, the Director must consider all written comments submitted to the Agency during the public comment period and must respond in writing to these comments in his or her decision.

(vii) With the written consent of the permittee, the Director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification request.

(7) The Director may deny or change the terms of a Class 2 permit modification request under paragraphs (b)(6)(i), (b)(6)(ii) and (b)(6)(iii) of this section for the following reasons:

(i) The modification request is incomplete;

(ii) The requested modification does not comply with the appropriate requirements of 40 CFR Part 264 or other applicable requirements; or

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

(8) The permittee may perform any construction associated with a Class 2 permit modification request after the submission of the request.

(c) *Class 3 modifications.* (1) For Class 3 modifications listed in Appendix I of this section, the permittee must submit a modification request to the Director that:

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

(ii) Identifies that the modification is a Class 3 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by 40 CFR 270.13 through 270.21 and 270.62.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Agency and must publish this notice in the local newspaper. This notice must be mailed and published on the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, and a name and address of an Agency contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with § 270.42(c)(4)(i);

(iii) Announcement that a second public meeting may be held if a written request is made to permittee's contact person within a specified period (of at least 15 days) after the announced public meeting;

(iv) Name and telephone number of the permittee's contact person;

(v) Name and telephone number of an Agency contact person;

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

(vii) 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) (i) The permittee must hold a public meeting no sooner than 15 days after the publication of the notice required in paragraph (c)(2) of this section and no fewer 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, and the time and place of the meeting must be announced in the public notice.

(ii) The permittee may hold a second public meeting at its own discretion or if requested by a member of the public. If the permittee chooses to hold a meeting, the permittee must notify persons on the facility mailing list maintained by the Agency and must publish this notice in a local newspaper. This notice must include:

(A) Announcement of the extension of the public comment period if the second meeting cannot be scheduled 15 days before the close of the initial comment period;

(B) Announcement of the date, time, and place of the meeting; the meeting must be scheduled no fewer than 15 days after publication of the notice and no fewer than 15 days before the end of the initial or extended public comment period;

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

(D) Name and telephone number of an Agency contact person; and

(E) Location where copies of the modification request and any supporting documents can be viewed and copied. The permittee must provide evidence to the Agency that the above-described notice was published in the local newspaper and mailed to persons on the facility mailing list.

(iii) The permittee may employ a neutral facilitator to chair the second meeting. In this case, the Director and the permittee must agree on the selection of the facilitator.

(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 modification request is submitted to the Agency. Comments should be submitted to the Agency contact identified in the notice.

(6) After the conclusion of the 60-day (or extended) comment period, the Director must grant or deny the permit modification request according to the permit modification procedures of 40 CFR Part 124. In addition, the Director must consider and respond to all written comments received during the initial 60-day or extended comment period.

(d) *Public notice and appeals of permit modification decisions.* (1) The Director shall notify persons on the facility mailing list within 10 days of any decision under this section to grant or deny a permit modification request; to grant a temporary authorization; or to classify a modification not listed in Appendix I. The Director shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification that goes into effect under § 270.42(b)(6) (iii) or (v).

(2) The Director's decision to grant or deny a permit modification request or temporary authorization under this section; the granting of an automatic authorization under § 270.42(b)(6) (iii) or (v); and the classification of a permit modification request under § 270.42(f), may be appealed under the permit appeal procedures of 40 CFR 124.19.

(e) *Temporary authorizations.* (1) Upon request of the permittee, the Director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of no fewer than 90 days and not more than 180 days. They may be reissued for an additional term of up to 180 days.

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

(A) Any Class 2 modification meeting the criteria in paragraph (3)(ii) of this section, and

(B) Any Class 3 modification that meets the criteria in paragraphs (3)(ii) (A) or (B) of this section; or that meets the criteria in paragraphs (3)(ii) (C) through (E) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request must include:

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

(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with 40 CFR Part 264 standards.

(iii) The permittee must notify by mail all persons on the facility mailing list, maintained by the Director in accordance with 40 CFR 124.10(c)(viii), about the temporary authorization request. This notification must be made within 7 days of the authorization request.

(3) The Director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Director must find:

(i) The authorized activities are in compliance with the standards of 40 CFR Part 264.

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is

likely to be taken on a modification request.

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To facilitate timely management of a newly regulated waste at the facility;

(C) To avoid disrupting ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes being managed at the facility; or

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

(4)(i) Within 60 days of a temporary authorization, the permittee must submit a complete modification request. If the Director determines that the request is not complete, he or she shall terminate the temporary authorization.

(ii) The Director shall review and act on the complete modification request submitted under paragraph (4)(i) of this section according to the procedures for Class 2 and 3 modifications specified in paragraphs (a) and (b) of this section. However, the time period specified in paragraph (b)(6)(ii) of this section for Class 2 modifications would end on the date the temporary authorization (or the extended temporary authorization) expired, rather than 120 days after receipt of the modification request.

(iii) If the permittee wishes to continue the activities conducted under the temporary authorization after the expiration of the term of the initial authorization (which cannot exceed 180 days), the permittee must comply with the public notification procedures for Class 2 or 3 modifications, as appropriate (paragraph (b)(2) and (b)(3) or (c)(2) and (c)(3) of this section, as appropriate). In addition, the public shall be provided an opportunity to comment on the modification request, in accordance with paragraph (b)(4) or (c)(4) of this section.

(f) *Other modifications.* (1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit a Class 3 modification request to the Agency, or he or she may request a determination by the 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, he or she must provide the Agency with the necessary information to support the requested classification.

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

(i) Class 1 modifications apply to changes that correct typographical errors in the permit and 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 Director may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to (A) common variations in the types and quantities of the wastes managed by the facility, (B) technological advancements, and (C) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

(3) The Director shall notify persons on the facility mailing list in writing of any determination made under § 270.42(f). This notice must be mailed within 10 days of the determination. Any person may appeal the Director's determination, as specified in § 270.42(d).

(g) *Newly listed or identified wastes.* (1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261 if he or she:

(i) Was managing the waste at the time the final rule listing or identifying the waste was published in the **Federal Register;**

(ii) Submits a Class 1 modification request at the time the waste becomes subject to the new requirements;

(iii) Is in compliance with the standards of 40 CFR Part 265 and, to the extent practicable, with those of 40 CFR Part 264; and

(iv) In the case of Class 2 and 3 modifications, submits a permit modification request within 180 days.

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

(h) *Permit modification list.* The Director must maintain a list of all approved permit modifications and must publish a notice once a year in a State-wide newspaper that an updated list is available for review.

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATIONS

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, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting; or maintenance	1
b. Other changes	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the Director	[1] 1
b. Extension of final compliance date	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Director [2]	[1] 1
B. General facility standards:	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations	1
b. 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 and 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
C. Ground-water protection:	
1. Changes in hazardous constituents for which the ground-water protection standard applies	3
2. Changes in concentration limit (including ACL)	3
3. Changes in point of compliance (e.g., due to inclusion of other units in waste management area)	2
4. Changes to wells:	
a. Changes in the number, location, or depth of upgradient or downgradient wells of permitted ground-water 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
c. Replacement of existing wells resulting in a change to location, design, or depth of the well	2
5. Changes in ground-water sampling or analysis procedures or monitoring schedule	2
6. Changes in established background ground-water quality concentration levels	2
7. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred	2
8. Changes in parameters or constituents that the permit requires to be monitored	2
9. Addition of a compliance monitoring program as required by § 264.98(h)(4) and § 264.99 or changes to a compliance monitoring program as required by § 264.99(k) [3]	2
10. Addition of a corrective action program as required by § 264.99(i)(2) and § 264.100 or changes to a corrective action program as required by § 264.100(h) [3]	3
11. Reduction in number of hazardous constituents analyzed for assessment program based on no evidence of wastes in the unit	2

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATIONS—Continued

Modifications	Class
D. Closure:	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations during the active life of the facility	2
b. Changes in estimate of maximum inventory of wastes on-site at any time during the active life of the facility	1
c. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of closure period	2
d. Changes in the expected year of final closure, where other permit conditions are not changed	1
e. Changes in procedures for decontamination of facility equipment or structures	2
f. Changes in the approved closure plan resulting from unexpected events occurring during partial or final closure	3
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 § 264.250(c)	3
d. Waste piles that comply with § 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 Director's approval	[1]
E. Post-closure plan:	
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 [2]	3
4. Changes to the expected year of final closure, where other permit conditions are not changed [2]	1
5. Events occurring during the active life of the facility, including partial and final closure, which necessitate changes to the approved post-closure plan [2]	2
F. Containers:	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity	3
b. Resulting in up to 25% increase in the facility's container storage capacity	2
2. Modification of a container unit without increasing the capacity of the unit	2
3. Storage of new wastes in containers:	
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
4. Other changes in container management practices (e.g., aisle space; types of containers; segregation)	2
G. Tanks:	
1.:	
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) below	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) below	2
c. Addition of a new tank 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 Director, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation	[1]
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
—the capacity difference is no more than 1500 gallons,	
—the facility's permitted tank capacity is not increased, and	
—the replacement tank meets the same conditions in the permit.	
4. Modification of a tank management practice	2
5. Management of new 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	2
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit	2
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 or without adding or modifying the unit's liner or leak detection system	2
4. Modification of a surface impoundment management practice	2
5. Storage or treatment of new 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
I. Enclosed waste piles:	
For all waste piles except those complying with § 265.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with § 265.250(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 a 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 new 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
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 new 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
K. Land treatment:	
1. Lateral expansion of or otherwise 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 permit	2
5. Management of new 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
6. Modification of a land treatment unit management practice to change rate or method of waste application	3
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, to 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 § 264.278(g)(2)	3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replacement of unsaturated zone monitoring devices or components of devices 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, number of sampling points, or that replaces unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements	2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid	3
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 conditions specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met	2
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 Director	[1]
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes 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:	
1. Modification of an incinerator unit:	
a. To increase by more than 25% any of the following limits authorized in the permit a thermal feed rate limit, a waste feed rate limit, or an organic chlorine feed rate limit. The 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

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATIONS—Continued

Modifications	Class
b. To increase by up to 25% any of the following limits authorized in the permit: a thermal feed rate limit, a waste feed limit, or an organic chlorine feed rate limit. The 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
c. By changing the internal size or 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 HC1 or particulate from the combustion gases, or by changing other features of the incinerator that could affect its capability to meet the regulatory performance standards. The 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. Modification of an incinerator 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 Director may require a new trial burn to demonstrate compliance with the regulatory performance standards	2
3. Replacement of unit components with functionally equivalent components that would not affect its capability to meet the regulatory performance standards or the operating conditions or monitoring requirements specified in the permit	1
4. Operating requirements:	
a. Modification of the limits specified in the permit for minimum combustion gas temperature, minimum combustion gas residence time, or oxygen concentration in the secondary combustion chamber. The 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. The Director may require a new trial burn to demonstrate compliance with the regulatory performance standards, particularly if thermal feed rates, waste feed rates or organic chlorine feed rates are to be substantially changed	2
5. Incineration of new wastes:	
a. If the waste contains a POHC that is more difficult to incinerate than authorized by the permit or if incineration of the waste requires compliance with different regulatory performance standards than specified in the permit. The 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 incinerate than authorized by the permit and if incineration of the waste does not require compliance with different regulatory performance standards than specified in the permit	2
6. Shakedown and trial burn period:	
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 incineration during the shakedown period for determining operational readiness after construction, with the prior approval of the Director	[1] 1
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
7. Substitution of an alternate type of fuel that is not specified in the permit [2]	1

[1] Class 1 modifications requiring prior Agency approval.
[2] Permit modifications not addressed or agreed upon by the Regulatory Negotiating Committee.

14. In § 270.62, the last sentence of paragraph (a) introductory text and the last sentence of paragraph (b)(10) are revised to read as follows:

§ 270.62 Hazardous waste incinerator permits.

(a) * * *

The permit may be modified to reflect the extension according to § 270.42 of this chapter.

* * * * *

(b) * * *

(10) * * *

The permit modification shall proceed according to § 270.42.

* * * * *

15. In § 270.63, paragraph (d)(3) is removed and paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 270.63 Permits for land treatment demonstrations using field test or laboratory analyses.

* * * * *

(d) * * *

(1) This permit modification may proceed under § 270.42, or otherwise will proceed as a modification under § 270.41(a)(2). If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the Director will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in § 124.15(b).

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