ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 264, 265 and 270

[FRL 3388-2]

Permit Modifications for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today amending its regulations under the Resource Conservation and Recovery Act (RCRA) governing modifications of hazardous waste management permits. Today's final rule establishes new procedures that apply to changes that facility owners and operators may want to make at their facilities. EPA has categorized selected permit modifications into three classes and established administrative procedures for approving modifications in each of these classes. The purpose of these amendments is to provide owners and operators 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.

EFFECTIVE DATE: October 28, 1988.

ADDRESS: The public docket for this rulemaking is available for public inspection in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket number is F-87-PMHP-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. 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 Wayne Roepe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 475-7245.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are promulgated under the authority of sections 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. Subtitle C requires EPA to identify hazardous waste and promulgate standards for generators and transporters of such waste. 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" requirements and later through permits issued under authorized State programs or by EPA.

Section 3005(a) of the RCRA prohibits all treatment, storage, and disposal of hazardous waste except in accordance with a permit issued under an authorized State program or by EPA. 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.

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 (40 CFR 270.41 and 270.42). Under that system the majority of permit changes followed 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. These procedures are the same as for initial permit issuance, except that the scope of public participation is limited to the specific permit conditions being modified. The minor modification regulations allow EPA or authorized States to make a limited set of minor changes in RCRA permits with the consent of the permit holder without triggering the procedures of Part 124.

A. Need for Revisions to Modification Process

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 matters. The result has been to delay or discourage facility changes, many of which would lead to improved management of hazardous 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 for ten years of operation, the facility or the permit writer cannot anticipate all or even most of the administrative, technical, or operational changes 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 many permits 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. Unless EPA improves the permit modification procedures, significant EPA (and permit holder) resources will be spent on making minor permit changes, 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 unable to obtain modified permit conditions in a timely manner. The net result could well be an increased threat to human health and the environment and a growing shortfall in hazardous waste treatment, storage, and disposal capacity.

B. Regulatory Negotiation

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. EPA established a committee under the Federal Advisory Committee Act to negotiate the provisions of the standard. At the final meeting on February 24, 1987, 18 of the 19 Committee members reached agreement on the major provisions of a permit modification proposal. The signed Committee statement has been included in the public docket for this rule. This agreement was the basis for the Agency's proposed rule on September 23, 1987 (52 FR 35838). EPA received over 50 comments on that proposal. The Agency has carefully analyzed those comments and made changes as appropriate in promulgating today's rule.

III. Summary of Today's Rule

EPA is today revising the regulations governing permit modifications (40 CFR 270.41 and 270.42) to incorporate a process that better accommodates the different types of modifications. 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.

Today's rule addresses only modifications requested by a permittee. It does not change the procedures for modifications sought solely by the regulatory Agency. The rule restructures §§ 270.41 and 270.42, which currently specify the major and minor modification procedures, respectively. The rule alters § 270.41 so that it applies only to modifications that are initiated by the authorized Agency; the current major modification procedures for these changes remain in effect. The rule alters § 270.42 to refer only to modifications requested by the permittee, and establishes three classes of modifications within this universe.

As defined in revised § 270.42, Class 1 and 2 permittee-requested modifications do not substantially alter existing permit conditions or significantly affect the overall operation of the facility. Class 1 covers routine changes, such as changing typographical errors, upgrading plans and records maintained by the facility, or replacing equipment with functionally equivalent equipment. 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.

Procedures differ among these three classes of permittee-requested modifications. 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. With cause, the Agency may reject any Class 1 modification.

Class 2 modifications begin with a modification request to the authorized Agency, public notice by the facility owner of a modification request, an informational meeting between the owner and the public, and a 60-day comment period. Within 90 days of receipt 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 mechanism for automatic authorization, which has become known as the "default" provision, is designed to provide reasonable certainty to facility owner/operators that Class 2 modification requests will be acted on expeditiously. Prompt consideration of modification requests is necessary to allow facilities to plan effectively for the future and to upgrade or modify facility conditions quickly in response to changing conditions. The rule also allows the facility to begin construction of a Class 2 modification 60 days after the modification is requested, although such construction would be at the permittee's own risk if the modification request is ultimately denied. This is known as the "preconstruction" provision. Finally, if the proposed Class 2 modification raises significant public interest or Agency concern about protection of human health or the environment, then the Agency can require that the Class 3 procedures be followed instead.

Class 3 modifications are subject to the same initial public notice and meeting requirements as Class 2 modifications. However, the default and preconstruction provisions of Class 2 do 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 is also changing 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

necessary permit changes immediately as long as the facility owner notifies 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 or she must submit a complete permit modification request within 180 days of the effective date of the rule designating the waste as hazardous. Furthermore, for land disposal units, the owner or operator would be required to certify compliance with all applicable groundwater monitoring and financial responsibility requirements for that unit within one year of the effective date.

Today's rule 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 up to 180 days, may be granted to Class 2 or Class 3 modifications that meet criteria specified in § 270.42(e). Owners and operators who apply for temporary authorizations are required to notify the public. Temporary authorizations that involve more permanent activities (i.e., activities that are intended to extend beyond 180 days) are subject to Class 2 or Class 3 public participation procedures for permit modifications.

Appendix I to 40 CFR Part 270 contains a list of specific modifications and assigns them to Class 1, 2, or 3. Permit modifications not listed in Appendix I may be submitted under Class 3. Alternatively, the permittee may request a Class 1 or 2 determination from the Agency.

For any final decision granting or denying a modification request, or for any temporary or permanent automatic authorization, the permittee and members of the public have the same rights of appeal as provided for RCRA permits in Part 124.

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.

The Agency emphasizes that today's rule addresses the procedures for approving permit changes and for public 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 be subject to the appropriate substantive Parts 264, 265, 268, and 269 requirements.

IV. Discussion of Final Rule

The following discussion of today's rule describes the new permit modification procedures and responds to the significant public comments received on the proposal. In this discussion, the terms "EPA," "Agency," and "permitting Agency" have been used interchangeably to mean the appropriate permitting authority (including the State agency, once it becomes authorized for these new procedures), that will be using these procedures for permit modifications.

A. Modification, Revocation, and Reissuance of Permits

EPA is today substantially restructuring §§ 270.41 and 270.42. As proposed on September 23, 1987, § 270.41 now addresses only those permit modifications initiated by the Agency. Section 270.42 covers only changes requested by the permittee, and contains the relevant permit modification classifications and procedures.

Section 270.41, as promulgated today, identifies three causes for which the Agency 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 human health or environmental basis of a facility permit. All three of these causes remain unchanged from the previous regulatory language, although the third cause—new regulations—was recently codified on December 1987 (52 FR 45788). The current Part 124 permitting procedures would remain in effect for these changes.

Commenters supported the use of § 270.41 for modifications initiated by the Agency. However, one commenter suggested that the permittee should also have the option of voluntarily employing the appropriate Class 1, 2, or 3 procedure as an alternative to the Part 124 permitting procedure. EPA agrees with this commenter, and points out that the language contained in today's rule would allow a permittee to request a permit modification in accordance with the § 270.42 procedures in anticipation of or in response to an Agency-initiated modification action.

As a part of restructuring § 270.41, today's rule deletes 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. Permittees can still request such changes, but the procedures are now contained in § 270.42. Commenters supported this action.

Several commenters expressed some concern that the revised language in § 270.41(a)(3) removes the "permit as a shield" protection for permittees. (*See* § 270.4(a)). They characterized this action as onerous and unreasonable. The purpose of this "permit as a shield" provision is to assure the permittee that by complying with the permit, he or she is in full compliance with the RCRA facility standards. Therefore, standards which become effective after permit issuance usually are not incorporated into the permit until it expires and is reissued.

However, the 1984 HSWA amendments require that certain statutory and regulatory provisions imposed by HSWA apply to all facilities, including those with permits. To clarify the Agency's authority to reopen permits as necessary to assure compliance with new regulations, EPA amended § 270.41(a)(3) (December 1, 1987 (52 FR 45788)). As stated in the preamble to the December 1 rule, this provision is intended only for significant amendments which may provide a substantial increase in the protection of human health or the environment.

The Agency believes that some confusion was created because both the September 23rd proposal on permit modifications and the December codification rule addressed § 270.41(a)(3). It is important to note that today's final rule does not change the substantive requirements of this paragraph, as it was promulgated on December 1. It only modifies this paragraph by deleting the procedures that relate to modifications requested by the permittee, since these procedures are now addressed in § 270.42. This is consistent with the September 23rd proposal.

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

1. Class 1 Modifications

EPA is promulgating today's rule covering Class 1 modifications essentially as proposed. (*See* § 270.42(a).) Class 1 modifications cover changes that are necessary to correct minor errors in the permit, to upgrade plans and records maintained by the facility, or to make routine changes to the facility or its operation. They do not substantially alter the permit conditions or significantly affect the overall operation of the facility. Generally, these modifications include the 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.

Section 270.42(a) specifies the approval procedures for Class I modifications. Under these procedures, the permittee may, at any time, put into effect any Class 1 modification that does not require prior Agency approval. The permittee is 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 must specify the change being made to the permit conditions or documents referenced in the permit and explain briefly why it was necessary. However, there are several cases where prior approval is required; these modifications are specifically identified in Appendix I.

The permittee is also required to notify by mail persons on the facility mailing list within 90 days of making the modification. The September 23, 1987 proposal only specified a 14 day notification period. EPA received several comments from respondents who believe that the Class 1 notification requirements would be an unnecessary administrative burden. EPA is sympathetic to these concerns, but believes that it is important to keep the public informed of all changes at RCRA permitted facilities. In an effort to alleviate potential burdens at facilities making frequent Class 1 changes or that have extensive mailing lists, today's § 270.42(a)(1)(ii) specifies a maximum of 90 days to notify the public of such changes. This time period will allow permittees to cluster some of their notices and still provide for public notice of these relatively minor changes.

EPA or an authorized State is currently required under 40 CFR 124.10(c)(viii) to compile and maintain a mailing 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 includes both local residents in the vicinity of the facility and statewide organizations that have expressed interest in receiving such information on permit modifications. A facility owner under today's rule is responsible for obtaining from EPA or the authorized State a complete facility mailing list and for updating it by contacting the Agency periodically. However, it is also the permitting Agency's responsibility to periodically inform the facility of new additions to the list. The facility owner/operator would not be held responsible for failure to notify persons recently added to the EPA list when the owner/operator has made a reasonable effort to keep its list current.

In today's rule, § 270.42(a)(1)(ii) has been amended to require the permittee to send notices of Class 1 modifications to appropriate units of State and local government as specified in § 124.10(c)(1)(ix). EPA solicited comment on this notification in the preamble to the proposal, and received support for the approach. It is important that all levels of government that have jurisdiction over the area where the facility is located remain informed of all changes in the facility permit and operation. (Note that similar changes have been made to notification procedures for Classes 2 and 3 modifications.)

Although the permittee may make most Class 1 modifications without Agency approval or prior public notice, under § 270.42(a)(iii) the public may ask the permitting Agency to review any Class 1 modification. In the event such a review is conducted, if the Agency denies a Class 1 modification request, the Agency shall notify the permittee in writing of this ruling, and the permittee is required to comply with the original permit conditions. Several commenters wanted a 30-day time period to return to compliance because of the time needed to make the changes. EPA does not believe a specific time period is necessary. The changes listed as Class 1 are minor in nature and for the most part should be easily reversible. If a Class 1 modification reversal by the Agency cannot be accomplished very quickly (e.g., a piece of equipment must be ordered), the permittee and the Agency can agree to an appropriate schedule for completion.

As proposed, EPA is allowing certain Class 1 modifications—such as changes in interim dates in schedules of compliance or minor changes in incinerator trial burns—only after the permitting Agency has approved the modification. This provision is contained in § 270.42(a)(2). Those Class 1 modifications which require prior Agency approval are identified in Appendix I with an asterisk. This approval procedure is analogous to the former minor modification procedures. The permittee must notify persons on the facility mailing list within 90 calendar days after the Director approves the request.

Several commenters asked for a specified timeframe for Agency decisions for the Class 1 modifications that require prior approval. Therefore, in today's rule a new provision has been added at § 270.42(a)(3) that allows the permittee to elect to follow the Class 2 process instead of the Class 1 procedures. As discussed in the following section, the Class 2 process will assure that an Agency decision will be made on the modification request within established timeframes (generally 90 to 120 days). This approach will also result in additional public participation regarding the permittee's request. Furthermore, the deadlines in the Class 2 process balance the concerns of the Agency, the public, and the permittee, and are readily adaptable to the types of facility changes encompassed in Class 1.

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 under the facility permit, (ii) technological advancements, and (iii) regulatory changes, where such changes can be implemented without substantially altering the design specifications or management practices prescribed by the permit. As specified in the rule, Class 2 modifications include 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 Part 270. This Appendix is discussed more fully in Section IV.C of this preamble.

Under § 270.42(b)(1), a permittee who wishes to make a Class 2 modification is required to submit to the Agency a modification request describing the exact change to be made to the permit conditions. The permittee must also submit supporting documents that identify the modification as a Class 2 modification, explain why the

modification is needed, and provide the applicable information required by §§ 270.13 through 270.21, 270.62, and 270.63. EPA also recommends that the permittee discuss the modification with the Agency and the public before submission to help eliminate unnecessary delays and denials.

i. *Public Notification.* Under § 270.42(b)(2), the permittee must notify persons on the facility mailing list and appropriate units of State and local government, and he or she is also required to publish a notice in a local newspaper regarding the modification request. In the September 23, 1987 proposal, these actions would occur on the date of submission. EPA received many comments on this subject. All the commenters favored more flexibility in the timing of the submission, the mailing, and the newspaper publication. The Agency is today adopting one suggestion which requires the permittee to complete the mail and newspaper notifications 7 calendar days before or after he or she submits the modification request to the permitting Agency. This will allow a two week period to accomplish the notifications, and makes coordination of necessary actions easier since, for example, some newspapers are not published on a daily basis. EPA believes that this alternative provides the best compromise between flexibility in timing the notice and assuring an adequate public comment period. However, if the newspaper publication is likely to occur before the modification request is submitted to the Agency, it is important that the permittee inform the Agency of the nature of the request prior to publication.

Section 270.42(b)(2) specifies the information required in the notice: (i) Announcement of a 60-day comment period during which interested persons may submit written comments to the permitting Agency; (ii) announcement of the date, time, and place for an informational public meeting; (iii) name and telephone number of the permittee's contact person whom the public can contact for information on the request; (iv) 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 viewing 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. Section 270.42(b)(2) also requires the permittee to submit to the permitting Agency evidence that this notice was published in a local newspaper and mailed to persons on the facility mailing list. Finally, the permittee must make a copy of the permit modification request and supporting documents accessible to the public in the vicinity of the permitted facility (for example, at a public library, local government agency, or location under control of the owner).

One commenter suggested that the 60-day public comment period should begin with the date of the newspaper notice rather than the date of submission to the Agency. EPA agrees with this comment since the newspaper notice will be the most easily determined date by the public. Therefore, § 270.42(b)(5) is modified in today's rule accordingly. This change in timing will give all members of the public a full 60 days to respond to the modification request.

The permittee is required to hold an informational public meeting, which is open to all members of the public, no fewer than 15 days after the start of the comment period, and at least 15 days before the end of the comment period. The purpose of this meeting is to enable the permittee and the public to exchange views and, to the extent possible, resolve any issues raised by the permit modification request. An official transcript of the statements made at the meeting is not required and the Agency is not obligated to attend the meeting or respond to comments made at the meeting. However, it is expected that the meeting will lead to more informed written comments submitted to the Agency, and it may also result in voluntary revisions in the permittee's modification request.

The "permittee's compliance history" will be made available to the public as provided in § 270.42(b)(2)(vi). The regulation does not specifically define what would constitute a "compliance history"; however, it should be designed to give the public a sense of the way the facility has been operated during the permit term. For example, the compliance history could be a summary list of permit violations, dates that the violations occurred, and whether these violations have been corrected. It would not include any instances where the allegations were dismissed, and would not contain confidential inspection reports or other confidential items not found in the public record (e.g., sensitive information pertaining to a pending enforcement action).

One commenter recommended that the compliance history should contain only those items related to the requested modification. EPA disagrees. The purpose of the requirement is to provide the public an opportunity to learn the overall record of the permitted facility. Restricting the requirement to items related to the requested modification (which, in any case, would be difficult to define) might lead to the omission of significant information on the company's compliance record.

ii. *Deadlines for Agency Decisions.* Section 270.42(b)(6) contains specific procedures for Agency review and approval or denial of Class 2 modification requests. Under § 270.42(b)(6)(i), the Agency must make one of the following five decisions within 90 days of receiving the modification request: (i) Approve the request with or without changes; (ii) deny the request; (iii) determine that the modification request must follow the procedures for Class 3 modifications; (iv) approve the request, with or without changes, as a temporary authorization having a term of up to 180 days; or (v) notify the permittee that it will make a decision on the request within 30 days. If the permitting Agency notifies the permittee of a 30-day extension for a decision (or, if it fails to make any of the decisions), 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; (iii) determine that the modification request must follow the procedures for Class 3 modifications; or (iv) approve the request as a temporary authorization for up to 180 days.

In addition, § 270.42(b)(6)(vii) allows the Director to extend indefinitely, or for a specified period of time, the deadlines for action on a Class 2 request if he or she obtains the written consent of the permittee. This option may be useful where the Director requests additional information from the permittee or when the permittee wishes to conduct additional public meetings. This provision is unchanged from the proposal.

If the Agency fails to make one of the four 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 authorization" without Agency action. At any time during the term of the automatic authorization, however, the Agency may approve or deny the permit modification request. If the Agency does so, this action will terminate the automatic authorization. If the Agency has not acted on the modification request within 250 days of receipt of the modification request (i.e., 50 days before the end of the automatic

authorization), under § 270.42(b)(6)(iv) the permittee must notify persons on the facility mailing list within seven days, and make a reasonable effort to notify other persons who submitted written comments, that the automatic authorization will become permanent unless the Agency acts to approve or deny it. If the Agency fails to approve or deny the modification request during the term of the automatic authorization, the activities described in the modification request become permanently authorized without Agency action on the day after the end of the term of the automatic authorization. (However, if the owner/operator fails to notify the public when EPA has not acted on an automatic authorization 50 days before its termination date, the clock on the automatic authorization will be suspended. The permanent authorization will not go into effect until 50 days after the public is notified. Until the permanent authorization becomes effective, the Agency may approve or deny the modification request at any time. In addition, the owner/operator will be subject to potential enforcement action.) This permanent authorization lasts for the life of the permit unless modified later by the permittee (under § 270.42) or the Agency (under § 270.41). This procedure for automatic authorization is commonly referred to as the "default" provision.

During the term of any automatic authorization, whether it was a temporary authorization occurring at day 120 or a permanent authorization at day 300, the newly authorized activities are limited to those described in the modification request. Furthermore, the permittee is required to comply with all applicable Part 265 standards during this term. 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 265.

EPA received many comments on the subject of automatic authorizations. Many of the commenters supported the provision as proposed on September 23, 1987, citing the need for assurances that certain limited changes at facilities will not be precluded by failure of the permitting agency to act on the modification request on a timely basis.

A number of commenters opposed this default provision, primarily because they believed that all permit modifications should undergo affirmative Agency review and approval before they went into effect. They argued that review and approval by a permit writer was necessary to ensure that the permittee in fact complied with applicable standards and provided a significant degree of protection to the public. Several commenters agreed that it was appropriate to impose a time limit on Agency decisions (e.g., 90 or 180 days), but argued that the concept of an automatic authorization, where the Agency had not acted within the time period, was inappropriate.

EPA acknowledges these concerns, but it continues to believe that the "default provision" is a critical element in its new permit modification scheme. Without such a provision, the regulated industry will have no assurance that the Agency will act expeditiously even on relatively limited changes that are necessary to the ongoing operation of a facility and that, in many cases, would upgrade public and environmental protection. Without such an assurance, the Agency believes that it will be difficult if not impossible for many facilities to manage wastes safely and effectively in the increasingly complex world of hazardous waste management.

The concept of automatic approvals has worked well in other EPA programs, such as EPA's review program for new chemicals under the Toxic Substances Control Act. This experience leads EPA to expect benefits, and not problems, from the automatic approval concept. Furthermore, it is balanced by significantly strengthened procedures for public participation. EPA believes that automatic authorization for limited types of modifications will contribute to a more effective and streamlined permitting program.

At the same time, the safeguards built into today's rule will ensure that Class 2 modifications receive sufficient review and that risks are limited under automatic authorizations. These safeguards include: (1) Limitations on the types of modifications that can be made under Class 2 procedures, (2) the Agency's authority to reject Class 2 modification requests because the applications are incomplete, or to require that they undergo Class 3 procedures (a new requirement in this final rule), (3) the fact that the Agency has up to 300 days to revoke an automatic authorization, if human health or environmental concerns are identified, and (4) the requirement that activities under automatic authorizations comply with Part 265 requirements.

As noted above, these safeguards include one significant new requirement, which EPA has included in response to commenters' concerns about the default provision. Section 270.42(b)(6) has been amended to allow the Director to determine that a Class 2 modification request should instead follow the Class 3 modification procedures. The Director may make this determination by the 90-day deadline (or 120-day deadline, if extended) required for Class 2 modifications, provided that there is significant public concern about the proposed modification or if he believes that the nature of the change warrants the more extensive procedures of Class 3. Therefore, if members of the public feel strongly that a Class 2 modification request should be subject to the Part 124 approval procedures contained in Class 3, they can raise this issue with the Agency during the comment period and express the reasons why the Class 2 process is not appropriate in the particular case.

In the proposed rule, EPA also solicited comment on another aspect of the automatic authorization. Under the proposal, a *temporary* automatic authorization would become *permanently* authorized if the Agency had not acted by day 300. In contrast, however, if the Agency issued a temporary authorization by day 120, there was no provision for an automatic authorization if the Agency then failed to make a final decision by the end of the temporary authorization. EPA requested comment on this seemingly inconsistent provision. Commenters expressed concern that at the end of the 180-day temporary authorization period the modification is, in effect, automatically denied if the Agency failed to take action to approve or deny the request. Commenters urged EPA to apply the permanent authorization default at the conclusion of Agency-issued temporary authorizations. EPA agrees with these comments, and has incorporated such a provision in § 270.42(b)(6) (iv) and (v).

Because of this change, it was also necessary to make some minor conforming changes to the language in § 270.42(b)(6)(iv) regarding the permittee's notice to the public about the possibility of a permanent default. The notice is triggered if the Agency has not made a final decision by the date 50 days before the end of the facility's automatic temporary or Agency-issued temporary authorization. Today's language has the same result as the proposal (which specified that the notice be triggered at day 250), but it also accounts for those situations where a temporary authorization is issued before day 120 (e.g., a temporary authorization issued on day 90). This change will assure that the public receives a 50-day advance notice of a possible permanent authorization via the default

mechanism. It is important to ensure that members of the public have sufficient advance notice of a potential permanent authorization so that they will have ample opportunity to press the permitting Agency for action to avoid a decision by default. This time period gives the Agency enough time to act in response to comments before the permanent authorization occurs.

Several commenters also argued against the Class 2 procedures because of their resource implications. One commenter, for example, contended that the procedures will strain EPA or state resources because they will require extensive review time for low priority modifications. EPA disagrees with this comment. Class 2 modifications represent a restricted category of changes, which should generally require a limited commitment of Agency resources to review. The major difficulty the Agency would have in meeting the 120-day deadline would be in situations where the facility owner or operator had not provided complete information; in these cases, the Agency has the authority to deny the request. Similarly, in controversial cases the Agency has the authority to require Class 3 procedures.

Another commenter argued that there may be an incentive for permittees to overload the system with many permit modification requests in the hope that they would be automatically authorized. EPA, however, does not believe that this concern outweighs the benefits of the approach in today's rule. In the first place, the rule provides significant disincentives for such a strategy by an owner or operator. The information requirements of Part 270 will discourage less than serious requests. Furthermore, under Class 2 procedures, the Agency can terminate an automatic authorization even after it has gone into effect, up to day 300 of the review. Therefore, facilities hoping to overwhelm the Agency with a large number of modification requests should recognize that the Agency would have almost a year to act on them, and that the disruption could be significant if a temporary authorization were revoked after the facility change had already been made. Finally, EPA is convinced that, if facilities confine Class 2 modification requests to legitimate Class 2 modifications and provide all the required information, it will be able to keep up with the work load. Where facilities do not meet the Class 2 requirements, the Agency will deny the request.

EPA also received comments on the standards that should apply to facility modifications during an automatic authorization. The proposal required compliance with the Part 265 standards at a minimum, and with Part 264 to the extent practicable. Many commenters asserted that the self-implementing nature of Part 265 is appropriate in these circumstances where the Agency has not made changes to the permit conditions. EPA agrees with these comments, and upon further consideration is changing the appropriate references in today's rule to require compliance with Part 265 only, in order to minimize any possible confusion that could occur from a permittee trying to judge which Part 264 standards are "practicable" in his situation.

iii. *Preconstruction.* The proposed rule allowed the facility owner/operator to perform any construction necessary to implement a Class 2 change before the modification request is granted. A number of State and industry commenters supported the preconstruction provision, saying that it will speed implementation of Class 2 modifications, and allow flexibility to plan and schedule activities before approval is granted. However, several commenters opposed the idea since they believed that the permitting Agency would be less inclined to deny a modification that had already been constructed.

EPA believes that preconstruction by the permittee, as allowed under the final rule, will not influence the permitting Agency's decision. Because of the limited nature of Class 2 modifications and the need for flexibility in maintaining permits, preconstruction will be allowed for this category of modification. However, in order to balance these needs with the concerns expressed by commenters, the preconstruction provision in today's final rule has been substantially modified. (*See* § 270.42(b)(9).) The date that construction can begin has been set at 60 days after submission of the modification request, unless the Director establishes a different date. In contrast, the proposal would have allowed construction immediately after the request was submitted. The new delayed construction date allows time for Agency and public review of the modification design, so that if the public raises concerns during the public comment period or if the Agency is likely to deny or change the request, the permittee can be informed prior to construction.

The second aspect of today's preconstruction provision allows the Director to establish a preconstruction date of more than 60 days after application submission. This flexibility is needed for several reasons. First, situations may arise that warrant design changes in the permittee's proposal, and the Director should be able to postpone all or part of the construction until the final design is approved (although this should be infrequent, given the limited scope of Class 2 modifications). Another reason for the permitting Agency to be able to delay construction stems from the new provision in today's rule that would a low the Director to determine that a Class 2 request should instead follow the Class 3 procedures. (See above preamble discussion.) Since there is no preconstruction allowed with a Class 3 modification, and since the public has 60 days to comment and request that the permittee's proposal follow the Class 3 procedures, the Director may not know by the 60th day whether there is sufficient merit to require the Class 3 procedures for the modification instead of Class 2. In such cases, the Director needs the ability to inform the permittee, by day 60, that construction should be delayed.

The proposed preconstruction provision was intended to allow expedited implementation of Class 2 modifications. Today's rule still meets that objective. Permittees can perform many activities prior to the construction date, including: Preparation of detailed design drawings, arranging for equipment delivery, making contractual arrangements for construction, etc. Additionally, if construction begins soon after the 60th day, in most cases the permittee should be ready to operate the modified portion at the facility by the time the Class 2 request is approved. Finally, in any case where construction occurs prior to final Agency action, the permittee assumes the risk that the request will be denied or changed.

3. Class 3 Modifications

Class 3 modifications cover changes that substantially alter the facility or its operations. Generally, they include 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 ground-water 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.

Since Class 3 modifications involve substantial changes to facility operating conditions or waste management practices, they should be subject to the same review and public participation procedures as permit applications. The specific procedures for Class 3 modifications are 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 § 270.42(c)(1), the permittee must submit a modification request to the Agency indicating the 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, 270.62, and 270.63. As with Class 2 modifications, the permittee is encouraged to consult with the Agency before submitting the modification request.

Section 270.42(c)(2) requires the permittee to notify persons on the facility mailing list and local and State agencies about the modification request. This notice must occur not more than 7 days before the date of submission nor more than 7 days after the date of submission. The notice must contain the same information as the Class 2 notification, including an announcement of a public informational meeting. The meeting would be held no fewer than 15 days after the notice and no fewer than 15 days before the end of the comment period.

Finally, after the conclusion of the 60-day comment period, the permitting Agency then initiates the permit issuance procedures of 40 CFR Part 124 for the Class 3 modification. Thus, the Agency will prepare a draft permit modification, publish a notice allow a 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 will consider and respond to all written comments received by the Agency during the 60-day public comment period as it conducts the activities required by Part 124.

In the September 23 notice, EPA proposed procedures for a second public meeting, which would be held at the owner or operator's discretion. EPA received several comments objecting to the requirements prescribing how the second meeting would be conducted (e.g., use of a neutral facilitator), particularly since the meeting was voluntary (i.e., the permittee could decide not to hold the meeting at all). In consideration of these comments, the Agency has dropped the reference to a second meeting in the Class 3 process. The purpose of today's rule is to specify the minimum requirements that must be followed for a Class 3 modification. Additional activities beyond those contained in today's rule (e.g., additional public meetings) may take place. In fact, EPA encourages frequent and early communications between the permittee and interested local citizens to informally address and resolve issues these parties may have. However, it is inappropriate to prescribe how such voluntary activities must be conducted.

EPA received very few additional comments on the proposed Class 3 procedures. One commenter wanted a provision for automatic authorization in the absence of Agency decisions on Class 3 modifications. EPA declines to do this because Class 3 modifications may have a significant effect on human health and the environment if the appropriate permit conditions based on Part 264 standards are not developed prior to actual implementation. This situation is unlike that for Class 2 modifications, which are more limited in their potential to adversely impact human health and the environment.

4. Other Permit Modifications

Although EPA has sought to provide a complete list of possible permit modifications and their classifications in Appendix I, there will undoubtedly be permit modification requests that are not included in Appendix I. Therefore, EPA today is establishing procedures that permittees can use under § 270.42(d) where a permittee wishing to make a permit modification not included in Appendix I can 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 this determination, the Agency will consider the similarity of the requested modification to modifications listed in Appendix I, and will also apply the general definitions of Class 1, 2, and 3 modifications. It should be noted that EPA intends to monitor decisions by permitting authorities (both EPA Regional offices and authorized States) on modification request classifications and will periodically amend Appendix I of this regulation to include new classifications.

Several commenters supported this proposed approach. Others stated that there should be a specified time limit on the Agency's classification determination. EPA disagrees because the determinations may be varied in nature and complexity. Also, since the decisions may sometimes be precedential, consultations among authorized States, EPA Regional offices, or EPA headquarters may be necessary. The Agency is committed to making a speedy decision for these classifications, but believes that a deadline will not be beneficial in these circumstances. Therefore, EPA has decided not to set a time limit for decisions of modifications classifications.

When the permittee chooses to request a classification determination instead of following the Class 3 process, then he or she should not initiate the formal modification review procedures until the Agency has decided on the appropriate classification. Otherwise, there may be confusion among the public concerning which process is being followed. Furthermore, the deadlines for Agency decisions in the Class 2 process will not begin until after the Agency has decided that the Class 2 procedures are appropriate for the modification and the permittee then proceeds in accordance with § 270.42(b). In any case, it should not take long for the permitting Agency to assign a classification to the modification request.

The proposal provided that the Agency would notify persons on the facility mailing list after making a determination on an unclassified change, and that the public and the permittee would have the right to appeal the decision. EPA is not adopting these provisions in today's rule, as discussed in section IV.B.6 of the preamble.

5. Temporary Authorizations

Today's rule provides the Agency with the authority to grant a permittee temporary authorization, without prior public notice and comment, to conduct activities necessary to respond promptly to changing conditions. (*See* § 270.42(e).) It is expected that temporary authorizations will be useful in the following two situations: (1) To address a one-time or short-term activity at a facility for which the full permit modification process is inappropriate; or (2) to allow a facility to initiate a necessary activity while its permit modification request is undergoing the Class 2 or 3 review process.

An Agency-issued temporary authorization may be obtained for activities that are necessary to: (i) Facilitate timely implementation of closure or corrective action activities; (ii) allow treatment or storage in tanks or containers of restricted wastes in accordance with Part 268; (iii) avoid disrupting ongoing waste management

activities at the permittee's facility; (iv) enable the permittee to respond to changes in the types or quantities of wastes being managed under the facility permit; or (v) carry out other changes to protect human health and the environment. Temporary authorizations can be granted for any Class 2 modification that meets these criteria, or for a Class 3 modification that is necessary to: (i) Implement corrective action or closure activities; (ii) allow treatment or storage in tanks or containers of restricted waste; or (iii) provide improved management or treatment of a waste already listed in the permit, where necessary to avoid disruption of ongoing waste management, allow the permittee to respond to changes in waste quantities, or carry out other changes to protect human health and the environment. A temporary authorization will be valid for a period of up to 180 days. The term of the temporary authorization will begin at the time of its approval by the Agency, or at some specified effective date shortly after the time of approval. The authorized activities must be completed at the end of the authorization.

Several commenters responded on the subject of temporary authorizations. Several supported the approach contained in the proposal, citing the beneficial flexibility to change certain facility operations with no adverse effect to human health or the environment.

Two other commenters supported the use of temporary authorizations, but for more restricted uses (e.g., for on-site wastes only or for unexpected situations only). One commenter was generally opposed because of a lack of public comment and hearings. EPA disagrees because the use of temporary authorizations is allowed only for specified purposes, which are intended to improve the management of hazardous wastes or respond to a critical situation. The Agency will have the authority to deny any requests which are not protective of human health and the environment or do not meet the criteria for a temporary authorization. Also, as discussed below, the permittee must notify persons on the facility mailing list about the temporary authorization and must comply with Part 264 standards for its duration.

The proposal would not have allowed temporary authorizations for periods of less than 90 days. In today's final rule, however, EPA has eliminated this minimum length to provide that the term of a temporary authorization may be for any period up to 180 days. Although two commenters supported the proposed minimum length, EPA is making today's change for two reasons.

First, the minimum specified period of 90 days seemed arbitrary and would likely result in restricting the Agency's flexibility to allow facilities to respond to temporary situations. For example, if the Agency believed that there was good cause to authorize a facility to conduct a particular activity without a permit modification but that the task should be completed within 30 days under the proposal, the Agency would be limited to approving the activity for 90 days or denying the request. Given that temporary authorizations were developed to allow a rapid response without the limitations of a formal permit modification, to set an arbitrary minimum duration would be needlessly restrictive and likely counterproductive.

Second, the duration of a temporary authorization under proposed § 270.42(e) (i.e., 90 to 180 days) was inconsistent with the temporary authorization which may be granted by the Agency at day 90 or 120 in the Class 2 process which can be granted for 1 to 180 days (see § 270.42(b)(6)(i)(D)). The different treatment of these temporary authorizations could lead to confusion.

The criteria in the final rule for approval of temporary authorizations under § 270.42(e)(3) are the same as proposed on September 23, 1987 except for two changes. First, in response to several requests by commenters, EPA is adding a specific provision for the storage and treatment of wastes subject to the land disposal restrictions of Part 268. This will give the regulated industry the flexibility to treat and store restricted wastes in tanks and containers, while the permit modification process is conducted. The Agency believes that there was sufficient flexibility to approve these changes as a temporary authorization under the proposed criteria; however, commenters wanted an assurance that the activities allowed under the recently promulgated minor modification provision in § 270.42(p)—which will be eliminated with today's new modification process—will be eligible for a temporary authorization under the new system. Therefore, these activities involving restricted wastes are specifically endorsed for temporary authorizations in new § 270.42(e)(3)(ii)(B).

In a second change, EPA decided not to retain the proposed temporary authorization provision for management of newly regulated waste. Instead, management of such waste is addressed solely under § 270.42(g). Although some commenters suggested keeping both alternatives, other commenters believed that the special procedure for new wastes in § 270.42(g) is generally more appropriate. EPA believes that it is preferable to have a single procedure for addressing newly regulated wastes, and agrees that § 270.42(g) is more appropriate since it is designed specifically for that situation. (See preamble discussion in Section IV.B.7.)

Section 270.42(e) (2) through (4) details the procedures 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; explain why the temporary authorization was necessary; and provide 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 and local and State agencies about the temporary authorization request within seven days of the request.

Section 270.42(e)(3) requires the Agency to approve or deny the temporary authorization as quickly as practical. To approve the authorization, the Agency must find that the request meets the criteria for a temporary authorization. It should be noted that today's rule, like the proposal, requires compliance with Part 264 for Agency-initiated temporary authorizations. This is because the procedures for obtaining such an authorization provides for Agency review of the permittee's request and an affirmative Agency action to approve the conditions of the authorization. Therefore, an Agency permit writer will be involved in establishing the appropriate operating conditions based on the Part 264 standards. This is in contrast to the automatic temporary authorizations (discussed in Section IV.B.2.ii above) where Part 265 standards are more appropriate since there are no Agency-prescribed site specific conditions developed.

A denial of a temporary authorization request would not prejudice action on any concurrent modification request. The denial only means that the activities contemplated by the permittee were not eligible for a temporary authorization. The request could still be acceptable as a permit modification.

In today's final rule, EPA has modified the language in § 270.42(e)(4) from the proposal. As proposed, § 270.42(e)(4)(i) required the owner or operator to submit a "complete modification request" within 60 days of obtaining a temporary authorization. This provision assumed

there would be circumstances where the permittee might not have time to provide all the material required under Part 270 (e.g., changes to closure plans or training plans) prior to issuance of the temporary authorization.

Several commenters disagreed with this proposal, pointing out that in many cases a temporary authorization could address a short-term or one-time situation, and would not require a permanent modification to the permit and submission of all the Part 270 information. EPA agrees with these commenters, and finds the 60-day deadline unnecessary, particularly since § 270.42(e)(3)(i) requires the permittee to demonstrate in his or her request that the Part 264 standards will be achieved. Thus, the Director should have all information necessary prior to a temporary authorization decision. In cases where some additional minor information is needed, the Director could make the authorization conditional on the submission of this information on an appropriate schedule.

The proposal allowed the renewal of a temporary authorization (§ 270.42 (e)(1) and (e)(4)(iii)), if the permittee initiated the Class 2 or 3 process for a permit modification. Today's rule modifies and clarifies these provisions. As required in § 270.42(e)(4) today, a temporary authorization cannot be reissued except through the following procedures. First, the permittee must initiate the appropriate Class 2 or 3 modification process for the activity covered in the temporary authorization. In addition, for a Class 2 modification, any extension of the activity approved in the temporary authorization must take place under Class 2 procedures. Finally, for a Class 3 modification, the Director may extend the temporary authorization if warranted to allow the authorized activity to continue while Class 3 procedures are completed.

The result of today's change for a temporary authorization that is concurrently undergoing the Class 2 review is to set a limit, generally, of 300 days for operation under the temporary authorization. The proposal would have allowed, in extreme cases, up to 540 days of temporary authorization before a final Agency decision was required. (For example, a 280-day authorization, reissued for a second 180-day period, and then the Director's decision per § 270.42(e)(4)(ii) to issue an additional authorization of 180 days.) These changes were made in response to commenters, who requested a shorter and clearer schedule for Agency decisions on Class 2 changes subject to temporary authorizations. EPA agrees with these comments, and maintains that Class 2 changes should be reviewed rapidly and incorporated into the permit as a modification. It is not appropriate for these decisions to be postponed for up to a year and a half. For these reasons, today's rule does not allow extension of a temporary authorization for a Class 2 activity, except through the Class 2 procedures that are leading to an Agency decision on the modification request.

For Class 3 modifications, the renewal of the temporary authorization is at the discretion of the Director if he or she believes that it is appropriate for the activities to continue while the Class 3 modification process is completed. In most cases it will be difficult to complete the Class 3 process in the 180 days allowed for the temporary authorization, since there will be at least 105 days of public comment (60 days for comment on the applicant's modification request and 45 days for comment on the draft permit modification prepared by the Agency), as well as one or more public meetings and a public hearing, if requested. Therefore, today's rule allows the extension of a Class 3 temporary authorization for an additional 180 days, for a maximum of 360 days. However, this would be allowed only if the facility is proceeding toward a Class 3 modification.

In summary, the Agency-issued temporary authorization mechanism provides a reasonable balance between the public's right to be informed of and comment on activities at permitted hazardous waste facilities and the facility owner/operator's need to implement certain changes rapidly. More generally, the temporary authorization procedure will provide important flexibility to permitted hazardous waste facilities without sacrifice to public health or the environment. 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 actually reduce risk and promote safe handling of wastes. For this reason, EPA believes that the temporary authorization procedure will be of benefit to the regulated industry, regulating agencies, and the public.

6. Notification Requirements and Permit Modification Appeals

Under today's rule, the Director will notify persons on the facility mailing list and appropriate state and local government agencies within 10 days of any decision to grant or deny a permit modification request (except for Class 1 modifications and temporary authorizations). (*See* § 270.42(f).) Such notification will also be given within 10 days after a Class 2 automatic authorization takes effect. The permit appeal procedures of 40 CFR 124.19 apply to the Director's decision to grant or deny a Class 2 or 3 permit modification request and to Class 2 automatic authorizations. For Class 1 modifications, temporary authorizations, and classification determinations, the appeal procedures of Part 124 do not apply, although in many cases there are opportunities to seek a change in the modification or authorization, as discussed in more detail below.

The proposal provided that the Agency would notify persons on the facility mailing list after making a determination on an unclassified change, after approving a Class 1 modification (when prior approval is needed), and after granting a temporary authorization. However, EPA received a number of comments from state agencies and industry arguing that there are too many required notices in the proposal, and that numerous notifications add complexity to the process and divert Agency resources to administrative tasks instead of to protection of the environment. EPA agrees with this comment for notifications of temporary authorizations, classification determinations, and Class 1 approvals.

In the case of Agency classification determinations, there will be subsequent public notification of the proposed changes as the facility proceeds with its modification request. The public will be able to raise concerns at that time if they believe that the modification request has been incorrectly classified. For these reasons, EPA believes that the notice regarding a classification determination would be redundant, and therefore is not adopting it in today's rule.

For Class 1 modifications, the permittee is required to provide notice of the change to persons on the facility mailing list within 90 days, including those cases where prior Director approval is required. (See § 270.42(a)(1)(ii).) The proposal would have also required that the Agency send a notice of its decision to the facility mailing list for a Class 1 modification that required prior Agency approval. EPA believes that there is no need for the Agency to mail such a notice since the permittee will be sending a similar notice. Two notifications regarding a single Class 1 modification would be a duplication of effort and could also be confusing to people on the mailing list.

For these reasons, EPA has eliminated the redundant Agency notice for Class 1 modification determinations in the final rule.

For Agency-issued temporary authorizations, a notice is sent to persons on the facility mailing list and to appropriate government agencies within 7 days of the facility's request. Thus, there is opportunity for the public to express its concerns to the permitting agency regarding the facility's application. Since many temporary authorizations will be of short duration (a few weeks to six months), a single notice of the activity should be sufficient. If the activity will continue beyond 180 days, the facility is obligated to follow the Class 2 or 3 process, which will provide for a second notification and opportunity to comment. For these reasons, EPA believes that the notification mailing regarding the Agency's decision to grant a temporary authorization would be repetitive and unnecessary.

In the proposal, § 270.42(f)(2) provided for the appeal of the Director's decision to classify a permit modification request, under the procedures of Part 124. One commenter objected to the public being able to provide input and delay progress on the processing of an unclassified facility change. While EPA maintains that public involvement in these decisions is useful and important, it also believes that once a determination has been made as to the appropriate modification procedures for a particular facility change, the permittee's application should be processed accordingly. As discussed earlier, the modification review process will provide an opportunity for indicating concerns regarding the Agency's classification decision. However, if a formal appeal were allowed for the classification decision, then a single appeal request could effectively require any modification to follow the Class 3 process—or else delay the modification process for months while awaiting the Administrator's decision on the appeal—regardless of the merits of the appeal. Therefore, today's rule does not provide for appeals of § 270.42(d) classification decisions.

As discussed above, during the modification approval process the commenters will be able to indicate any concerns with the classification assigned by the Agency. If the Agency agrees with the comments, then it could reclassify the permittee's request and initiate the appropriate modification procedures. For example, if in the course of a Class 2 modification process the Agency is convinced by commenters to follow the Class 3 procedures instead, then the Agency would prepare the appropriate notification and draft permit as required by Part 124 after the Class 2 comment period is concluded. However, if the Agency disagrees with the request to reclassify the modification, then it must provide its response in the administrative record; such decision constitutes a final Agency determination and is not subject to appeal under Part 124 procedures.

Although the proposal would have applied the Part 124 appeals procedures to Class 1 modifications and temporary authorizations, today's final rule does not contain such appeal procedures. For Class 1 changes, any person can request the Director to review the modification, and the Director may, for cause, reject the modification. This mechanism provides recourse for persons concerned about such a modification. Due to the very limited nature of Class 1 changes, however, the Agency does not expect these activities to be called into question.

Agency-issued temporary authorizations are intended to allow facilities to respond rapidly to changing conditions and to enhance the environmental protection at the site. Because swift action is essential for these authorizations, and since they will only allow operation for a maximum of 180 days (unless a permanent permit modification has also been requested), EPA believes that the Part 124 appeals procedures cannot be integrated into the temporary authorization process without undermining the fundamental purpose of such authorizations.

One commenter suggested that if a subsequent denial of already implemented modified operations conducted under a Class 1 modification, a Class 2 automatic authorization, or a temporary authorization is appealed, those operations should be allowed to continue until the appeal is resolved. As discussed above, today's final rule does not provide for appeals for Class 1 and temporary authorization decisions. If the Agency denies one of these activities after the facility has already implemented it pursuant to today's rule, then the Agency may provide for a reasonable period of time for the facility to cease operation, if appropriate. In the case of automatic authorizations, EPA agrees with this commenter. If a permittee has followed the established Class 2 procedures and an automatic authorization has occurred, then he should be entitled to operate pursuant to such authorization until the Agency has made a final determination or until an appeal opposing the automatic authorization has been granted. Otherwise, a single appeal could negate any automatic authorization before the Agency has been able to review the merits of the appeal. Therefore, today's rule provides that in the case of an appeal of an automatic authorization, the authorization remains in effect until such appeal is granted.

7. Newly Listed or Identified Wastes

"Today EPA is promulgating a new provision in § 270.42(g) that provides permittees with a special procedure for modifying permits when wastes they are already managing are newly listed or identified by EPA as hazardous. Under this provision, the permittee must submit a Class 1 modification request at the time the waste becomes subject to the new listing or identification—that is, on or before the effective date of the rule listing or identifying the waste. If the changes at the facility constitute a Class 2 or 3 modification, the permittee must submit, in addition to the above Class 1 request, a complete permit modification request within 180 days of the effective date. Until a final decision is made on the modification request, the permittee must comply with Part 265 standards. In addition, 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. Finally, for land disposal units, the owner or operator is required to certify compliance with all applicable groundwater monitoring and financial responsibility requirements within one year of the effective date. If the owner or operator fails to make this certification, he or she will lose authorization to operate the unit.

EPA is taking this action for several reasons. First, the Agency believes that several rules expected in the next few years, such as the Organic Toxicity Characteristic, will classify additional wastes as hazardous. A potential for disruption in the handling of these newly identified wastes exists because of the time involved in the permit modification process for permitted facilities, particularly when Class 3 modifications are needed. If the permittee has not obtained a permit modification when a listing or identification becomes effective, the facility could not handle the waste until the permit is revised as needed. There may be a severe shortage in waste management capacity if a significant number of facilities which have previously handled the newly identified wastes are barred from doing so because they have not been able to

obtain permit modifications. In addition, the on-going operations of many facilities will be severely disrupted. This scenario will become more likely as more facilities obtain RCRA permits.

A second reason for this procedure is that, without it, permit writers may be forced to give these modifications a very high priority, regardless of the effect on the environment, because of the potential impact on capacity and the disruption of facilities. Since permitting resources are limited, other permitting activities with greater environmental consequences may be delayed.

Last, there would be an inequity between permitted facilities, and interim status or unpermitted facilities. Under RCRA, previously unregulated facilities can gain interim status after a waste is newly listed or identified as hazardous, allowing them to continue to handle the waste, simply by submitting a Part A application and, if required, by complying with section 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 Class 2 or 3 permit modification in most cases. As a result, permitted facilities would be treated unequally when wastes are newly listed or identified. The procedures adopted today rectify the potential disequilibrium between permitted and interim status facilities.

Today's rulemaking is also consistent with the August 14, 1987 proposed rule for Changes to Interim Status and Permitted Facilities for Hazardous Waste Management (see 52 FR 30570). The August 14 proposal is procedurally very similar to today's rule. The one difference is that the August 14 proposal would have required facilities to initially obtain prior Agency approval through the minor modification process before handling newly regulated wastes. Today's rule, on the other hand, uses the Class 1 procedure, which does not require prior EPA approval. The permittee simply has to notify the Agency 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 in today's rule since the August 14 proposal was based on the framework of the current minor modification regulations, which do not provide for permit modifications without prior Agency approval.

EPA has decided not to adopt the procedure for newly regulated waste suggested in the August 14 proposal, since that proposal was intended as only an interim mechanism until this permit modification rule became final. We note that commenters to the August 14 proposal generally supported a special procedure for newly listed or identified waste. However, some commenters felt that the proposal should have gone even further in giving permittees the same flexibility as interim status facilities. Today's permit modification rule provides this equal flexibility. EPA has reviewed the comments to this portion of the August 14 proposal, and responds to them below.

The Agency received many comments on this section of today's rulemaking. Two commenters stated that the date of submission for the initial Class 1 request should be clarified. EPA agrees and has amended § 270.42(g)(1)(ii) to require that the Class 1 request must be submitted on or before the effective date of the rule which newly lists or identifies a waste as hazardous. This final rule will also retain the requirement that the subsequent Class 2 or 3 requests must be submitted within 180 days of the effective date for the new listing or identification. Several commenters favored this position. One commenter argued that a shorter period would be more appropriate. EPA disagrees. The 180-day time limit for submission provides a reasonable balance between a speedy permit process that is protective of human health and the environment, and the need to allow both the facility and the permit writer to develop the appropriate but often complex permit conditions. As specified § 270.42(g)(1)(iii), the facility must comply with the standards of Part 265 during this period.

Several commenters on the September 23, 1987, and August 14, 1987 proposals expressed concern about when they had to be handling the newly listed or identified wastes to be eligible to use this procedure. Under the proposal, to be eligible, facilities would have to be handling the waste at the time of publication of the final rule listing or identifying the waste as hazardous. Most of the commenters argued that the requirements should be consistent with those for unpermitted facilities, which can gain interim status if they are "in existence" as hazardous waste management facilities at the time the new listing or identification becomes effective. EPA agrees with this comment. The Agency believes that it is inequitable in this case to have different tests for permitted and interim status facilities, and therefore has modified the rule accordingly.

Therefore, in response to these comments, the Agency has removed the proposed requirement that the facility must be handling the waste at the time of publication of the final rule for the new waste. Instead, today's rule specifies that permitted facilities eligible for this provision must be "in existence" as hazardous waste facilities for the waste in question on the listing or identification's effective date. This standard is identical to the standard for facilities qualifying for interim status when the permitting regulations were initially issued. For further information on this concept, see the preamble discussion at 45 FR 76630 (November 19, 1980).

Finally, EPA has added a new requirement for land disposal units eligible for a permit modification under this section. Under § 270.42(g)(1)(v), the owner or operator of such units must, within one year of the effective date of the new listing or identification, certify compliance with Part 265 ground-water monitoring and financial responsibility requirements. If the owner or operator fails to do this, he or she would lose authority to operate the unit. EPA has included this provision, which was proposed in the August 14, 1987, notice, to ensure consistency with unpermitted facilities. Of course, if the Agency modifies the permit to incorporate Part 264 before the one year period is up, the facility does not need to submit a certification.

8. Publication of Permit Modification List

As required by § 270.42(h), EPA (or the authorized State) will maintain a list of approved permit modifications and publish a state-wide notice annually that the list is available for review. The public notice will primarily serve as a reminder to the public that an updated list is available for review. Members of the public interested in a closer review can follow the Agency's actions on a site-specific basis. This provision is unchanged from the proposal.

C. Classification of Permit Modifications

Today's rule creates Appendix I to Part 270 that identifies what types of facility changes constitute Classes 1, 2, and 3 modifications. This classification list generally follows the organization of the facility standards in Part 264 and is designed to be self-explanatory.

Most commenters generally supported the concept of using Appendix I to classify types of facility changes into Classes 1, 2, and 3 modifications. However, concerns over several general

issues and a number of specific items included in Appendix I of Part 270 were raised.

Although most commenters supported the classification of facility changes into Classes 1, 2, and 3 modifications, several questioned the practicality of increasing the number of classes of modifications from the two-tiered system (i.e., major and minor modifications). These commenters felt that with three categories of modifications the process will be more complicated and may increase the number of misunderstandings between the regulated community and EPA or authorized States which could lead to numerous appeals. Two commenters expressed a preference for expanding the current list of minor modifications instead of reclassification. EPA believes, as did the Permit Modification Negotiating Committee, that three classes are necessary to provide EPA and authorized States the flexibility to appropriately address various types of permit modifications. The current system provides only two procedures for modifying a permit—the minor modification procedure provides for no public notification or comment, while the major modification procedure requires all the formal proceedings of permit issuance. In contrast, the three classifications will provide EPA and authorized States the appropriate mechanisms for processing a wide spectrum of permit changes in a timely manner. EPA believes that the system of three classifications and the associated procedures will provide the necessary flexibility while ensuring early, appropriate public participation.

The specificity of Appendix I caused several commenters to be concerned that permit modifications would be required under the proposed rule for minor changes to a facility that would not currently require modification. EPA clarifies that permit modifications are applicable only when changes made to a facility affect a condition specified in the permit. Thus, for example, if a particular item of equipment, including the manufacturer's name and the model number, is specified in a permit, replacing that item with an identical item (same manufacturer and model number) would not affect that permit condition and would not require a modification. Similarly, if the equipment is described generally, then changing that equipment also would not require a permit modification as long as the new equipment met the same definition and specifications. Normal routine maintenance would not usually require a permit modification unless the activity directly affects a condition specified in the permit.

1. Change of Facility Owner or Operator

The current regulations governing change in ownership or operational control are addressed in § 270.40 (Transfer of permits), § 270.41(b)(2) (Causes for modification or revocation and reissuance of permits), and § 270.42(d) (Minor modifications of permits). These regulations allow the Agency to make a minor modification to a permit to reflect a change in ownership or operational control, provided the new owner or operator submits a revised permit application within 90 days prior to the scheduled change and demonstrates compliance with 40 CFR Part 264 Subpart H (Financial Requirements) within six months of the scheduled change. During the transfer of the permit, the previous owner or operator must comply with the requirements of Subpart H until the new owner or operator has demonstrated to the Director that he or she is complying with the requirements of that subpart.

When considering how to incorporate changes in ownership or operational control into the new modification approach, the Negotiating Committee could not agree on the most appropriate classification. Therefore, EPA published a second permit modification **Federal Register** notice on November 28, 1987 (52 FR 44153) that proposed essentially to retain the current standards for changes in ownership or operational control by classifying such modifications as Class 1 with prior Agency approval. This classification retained the existing level of Agency oversight, but provided the additional public participation opportunities contained in the Class 1 procedure.

EPA received several comments that supported the proposal, and is today incorporating this approach into the final rule. EPA decided, however, that this provision should be set forth in the § 270.40 regulation instead of in the Appendix, as proposed, due to the prescriptive conditions associated with this type of modification. Therefore, in today's rule, the existing language in § 270.40 is designated as § 270.40(a), and a new paragraph (b) is added to address changes in ownership or operational control. In Appendix I, new Item A(7) identifies changes in ownership or operational control as a Class 1 modification with prior Agency approval, but refers to § 270.40(b) for the substantive requirements.

Two commenters objected to the requirement for submission of a revised permit application at least 90 days before the scheduled change. They wanted to be able to make such business transactions in a shorter period of time by not having to wait for Agency approval. Another commenter thought that this modification should be a Class 1 change with prior Agency approval only for the financial responsibility requirements in Subpart H. Two other commenters suggested that the Class 2 process for changes in ownership or operational control would be more appropriate. As stated in the November 18 notice, EPA recently completed a rulemaking on these issues regarding changes in owner and operator (May 2, 1986, 51 FR 16422), and is therefore reluctant to overturn these requirements based on the few comments received on the subject in this rulemaking.

2. General Permit Provisions

The items identified under "General Permit Provisions" in Appendix I are primarily derived from conditions applicable to all permits as specified in §§ 270.30–270.33. Other general changes included in this section are administrative in nature, or recur throughout the Part 264 regulations but would be more simply addressed in one place (e.g., frequency of reporting).

The first two items in Appendix I specify that administrative and informational changes or correction of typographical errors in the permit are Class 1 modifications. Comment was requested on whether correction of "minor factual errors" should be added as a Class 1 change and on how this should be defined. One commenter supported the addition of this item, but did not suggest a definition. EPA decided not to add this item to Appendix I since it believes that many of these changes will be covered under other items in the Appendix (e.g., training plans, contingency plans), or, if not, the permittee may request a determination by the Director that the modification be treated as a Class 1 or 2 under § 270.42(d).

Under Item A(3), permittees are 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, and instrument readout devices. In most cases, such replacements would not require a permit modification since the permit would acknowledge them as ongoing maintenance activities. However, some permit conditions may inadvertently create restrictions by incorporating portions of the Part B permit application by reference. For example, if a permit incorporates a design drawing by reference which

specifies a particular piece of equipment—including the manufacturer's name and the model number of the item—then to replace the item with anything other than the original model might require a permit modification. Such an item may not be available at a later date when it needs replacement, or the permittee may prefer to replace it with an improved version.

EPA does not believe that anyone (the permittee, the public, or the government) benefits from subjecting such routine maintenance functions to the permit modification process. It is preferable that permits contain sufficient flexibility to allow these kinds of equipment replacements outside of the permit modification process. Therefore, if it is necessary to include design drawings in permits, the permit condition should also allow minor deviations from the design without a permit modification (although the Director may want to have the permittee send the revised design to the Agency to maintain a current file on the facility).

In spite of the preferred method of drafting permit conditions, there are many existing RCRA permits that contain very detailed information regarding facility equipment and provide little or no leeway for deviation. Therefore, Item A(3) in the Appendix provides that equipment replacement or upgrading with functionally equivalent components is a Class 1 change. This will allow the facility to change ancillary equipment without prior approval if the original equipment is no longer made or to take advantage of better designed 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.)

Item A(4) addresses changes in frequency of monitoring, reporting, and maintenance activities. One commenter requested that "sampling" be added to Item A(4), stating that it logically belonged with monitoring, reporting, and maintenance activities. EPA believes that sampling is included in the term monitoring (as in ground-water or unsaturated zone monitoring). However, to clarify this, "sampling" has been added to these items.

Item (A)(5) allows changes in interim compliance dates in schedules of compliance as a Class 1 modification with prior Director approval. However, where such changes would likely delay the final date of compliance, it would instead proceed as a Class 3 change.

Several commenters argued that many modifications should be classified as Class 1 whenever an improvement is being made to equipment, hazardous waste management units, or facility management standards. EPA disagrees with this suggestion since such a provision would be much too broad for the Class 1 category, and could lead to major changes at a facility that would be more appropriate as Class 2 or 3 modifications. Furthermore, if a permittee wishes to make such improvements expeditiously, he or she could seek a temporary authorization.

3. 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 through 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.

EPA has made one addition to this section to clarify a point that was not clear in the proposal. In many cases, specific changes at a facility will necessitate changes in general facility standards and plans. For example, the introduction of a new waste at a unit might necessitate a change in the contingency plan, or the addition of a new unit might require a change in the facility's closure or security plan. In such cases, the changes in the plan would be reviewed and approved under the same procedures as are required for the introduction of the new waste or the new unit. Thus, if a facility brought a tank treatment unit on-site for 90 days under Class 1 procedures, review of any necessary changes in the facility's contingency plan or waste analysis plan would take place under Class 1 procedures as well. This point is clarified in a note added to Section B of Appendix I. It should be noted that the permit changes that may be reviewed in this fashion are limited to the items specifically identified in Section B of the appendix; i.e., general facility standards and plans. Therefore, if the addition of a new waste involved a new tank unit with different management practices than those authorized by the permit (*see* Item G(5)(b)), then the Class 3 procedures apply.

Several commenters had suggestions on specific items in Section (B). One commenter suggested that only significant changes in the procedures for maintaining the operating record should require a permit modification (see Item B(3)). The commenter was concerned that changes in a computer program that is used in conjunction with the operating record could require a modification. It is not EPA's intent to require modifications for such recordkeeping methods. It is unlikely that actual procedures for maintaining the operating record (other than the location of the record) will be specified in permits; therefore there is already significant flexibility in the method of maintaining the record, as long as the requirements of § 264.73 are met. However, EPA emphasizes that in cases where procedures for maintaining the operating record are specified in the permit, a Class 1 permit modification will be required for a change that affects the permit condition.

In a related matter, several commenters were concerned that modifications listed in Appendix I (e.g., B(4) changes in frequency or content of inspection schedules) would require a facility to go through a Class 2 permit modification to carry out more frequent or more extensive activities than required in the permit. Again, EPA would like to clarify that as long as a specific permit condition is not affected by a change, a modification is not required. Thus, as long as the frequency and content of inspections specified in the permit are fulfilled, additional inspections would not require a modification.

Several commenters argued that items classified as Class 2 under Section B(6), Contingency Plan, should be reclassified as Class 1. EPA disagrees and points out that these items, (changes in emergency procedures and removal of equipment from emergency equipment list) may lead to a significant decrease in the level of protection for human health and the environment. Thus, a Class 2 modification is appropriate to allow public comment on each proposed change.

4. 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.

In the proposal, EPA suggested 11 items for inclusion in Appendix I to describe anticipated changes in permitted ground-water protection programs. EPA reevaluated the proposed classifications, and found that several of the items were redundant and that a few others could be clarified. In addition, commenters suggested several improvements that could be made. For these reasons, the ground-water items in

Section C of the Appendix have been restructured (as discussed below) to define these modifications more precisely.

EPA believes that Class 2 is an appropriate category for many ground-water monitoring changes, because the modification requests must 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, improved technology, or other considerations. Therefore, public health and the environment will be best served by an expedited approval procedure for these kinds of changes.

The first item in the appendix addresses changes to wells (C(1)). This classification is unchanged from the proposal except that well replacements that result in a change to location, design, or depth of the well—which was a separate item in the proposal—is now merged into Item C(1)(A) which describes all changes that affect number, location, depth, or design of wells. Such changes are Class 2. Item C(1)(b) identifies certain well replacements that are Class 1 changes, namely the replacement of a damaged or inoperable well that does not involve a change in its location, design, or depth.

Several commenters argued that changes in sampling or analysis procedures or changes in statistical procedures should be reclassified as Class 1 with prior Director approval since they are technical in nature and generally of limited interest to the public. EPA agrees with these comments and has changed them in today's final rule to be Class 1 modifications with prior approval. (See Items C (2) and (3).) The Agency should be able to respond promptly to such facility requests, particularly where they will lead to more representative or improved sampling, analysis, or evaluation techniques. Furthermore, since these changes are easily reversible, any subsequent concerns raised by the public could be considered and implemented, if merited.

A change in the point of compliance (C(4)) is a Class 2 change as proposed, although the language in this provision has been changed slightly to indicate that such changes may be necessary when land-based units are added to the facility.

Changes in indicator parameters, hazardous constituents, or concentration limits are addressed in Item C(5). If such changes are made in the detection monitoring program they are Class 2, whereas a Class 3 modification is required where the ground-water protection standard is affected. This classification is a result of consolidating five of the items in the proposed appendix. In the proposal, changes in hazardous constituents for which the ground-water protection standard applies (proposed C(1)) and changes in concentration limit (C(2)) were identified as Class 3 changes; in today's rule item C(5)(a) encompasses these changes. Today's Class 2 changes in C(5)(b) are derived from three proposed items: Changes in established background ground-water quality concentration levels (C(6)); changes in parameters or constituents (C(8)); and reduction in number of hazardous constituents analyzed for an assessment program based on no evidence of wastes in the unit (C(11)). Commenters supported the proposed classification of these items; however, the proposed language was redundant in some cases (e.g., proposed (C) (8) and (11)). Furthermore, EPA believed that some confusion may have resulted from the scattered nature of these items. Therefore, the Agency consolidated these actions to address them comprehensively in a single place.

A new Item C(6) has been added to address changes made in the detection monitoring program. Although this item was not mentioned in the proposal, § 264.98(j) specifically requires a permit modification when the detection monitoring program no longer meets the requirements specified in the regulations. The Agency is establishing this as a Class 2 modification in today's rule. Changes in the detection monitoring system are comparable to the kinds of changes that could occur in a compliance monitoring program, which are identified as Class 2 (as discussed below).

Comments were also requested on two items added to Appendix I in the proposal: Changes to a compliance program (C(7)) and addition of or changes to a corrective action program (C(8)). (Note that these changes are typically imposed by the Agency and therefore would follow the modification procedures of § 270.41, unless the permittee elected to use the § 270.42 procedures instead.) No comments were received on changes to a compliance program, and it remains a Class 2 modification in today's rule. One commenter raised the point that classifying all changes to a corrective action program as Class 3 would require permittees to go through the Class 3 modification procedures for changes that under a detection program would be classified as Class 1 or 2. The commenter suggested that the general classification of corrective action changes should not subsume specific ground-water monitoring modifications that have been identified in the Appendix. EPA agrees with the comment, and believes that it is equally applicable to the general provisions for detection monitoring (C(6)) and compliance monitoring (C(7)) as well. The commenter also argued that every change in a permitted corrective action program should not have to undergo a Class 3 modification. EPA agrees with this comment, and has reclassified changes in the corrective action program.

One commenter suggested that a thorough analysis of the appropriate classifications for changes to corrective action permit conditions should be made in the upcoming corrective action rule. EPA agrees and adds that it intends to address corrective action permit modifications in conjunction with that rule. (Also see discussion in Section III.C.9 of the preamble.)

An additional comment regarding ground-water protection suggested that proposed Item C(1) should be amended to specify that a reduction in the number of hazardous constituents for which the ground-water protection standard applies should remain Class 3 but that an increase should be Class 1. The Agency points out that the ground-water protection standard is one of the most critical elements of a ground-water protection program. Any change to the ground-water protection standard may substantially alter the ground-water monitoring system and is thus appropriately classified a Class 3 modification. (In today's rule, this change has been reclassified as C(5)(a).)

A final commenter expressed the opinion that proposed item C(11), reduction in the number of hazardous constituents analyzed for in the assessment program based on no evidence of wastes in the unit, should be a Class 1 rather than a Class 2 modification. First, the Agency notes that the language of Item C(11) should have referred to the detection or compliance monitoring program since there is no assessment program under the Part 264 permit standards. Second, the classification of this item remains Class 2 in the final rule and has been renumbered as C(5)(b). Participants in the permitting process may not necessarily agree upon whether or not evidence of waste in a unit exists; thus some level of Agency and public review is appropriate to make a determination

on this issue. This type of modification is not always a trivial change, but it is a common change that may be necessary to maintain a facility's capability to manage wastes. Thus, a Class 2 modification is appropriate.

Permittees should understand that, if a permit modification request does not provide documentation that the modification will fully comply with Part 264 standards and will not reduce the effectiveness of the ground-water monitoring system, EPA or an authorized state will deny the request. (Alternatively, the Agency could extend the review period, with the approval of the permittee, to allow for appropriate improvements in the request.) Therefore, permittees should consult closely with the regulating agency before requesting these modifications, except in the most straightforward of cases.

5. Different Wastes in a Unit

The use of the term "different 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.8 of this preamble.

Permit modifications to allow different wastes at a permitted unit are classified into two general categories. The first situation involves different wastes that are sufficiently similar to wastes currently authorized at the unit so that no additional or different management practice, 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 permit modification will follow the Class 2 process.

The second situation is where the introduction of a different waste at a unit will require different or additional management practices, design, or processes to properly manage the waste—for instance, if the waste is reactive or ignitable—and the permit conditions does not anticipate that such wastes will be managed in the unit. These circumstances require a Class 3 permit modification.

In the proposal the term "new wastes in a unit" was used instead of "different wastes in a unit" in Appendix I. This led a number of commenters to confuse the Appendix I modifications, which address the management of existing hazardous wastes in different units from those prescribed by the permit, with the separate provision concerning the management of newly listed or identified wastes. Since there are different modification procedures for the management of newly listed or identified wastes (§ 270.42(g)), the distinction is critical. To clarify this issue for persons using Appendix I, in today's rule the Agency is using the term "management of different wastes in a unit" to refer to changes involving the introduction of hazardous wastes to units that are not permitted to handle these wastes. Also, notes have been added to the Appendix to reference § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

Many commenters suggested that the modifications regarding management of different wastes in each specific type of unit be reclassified or downgraded. EPA considered these comments, but has decided to retain the respective classifications as proposed for the following reasons. First, when a facility proposes to alter the way that its wastes will be treated, stored, or disposed, then the public should have an opportunity to comment on the proposal prior to a final Agency decision. The Class 2 and 3 processes provide for such public input. Second, where the introduction of different wastes to a unit involves additional or different operating procedures or management practices, there is a greater potential for significant change to the permitted operation; therefore the Class 3 process should be followed since it was designed for those circumstances. Finally, it should be noted that in many cases the permittee can apply for a temporary authorization to implement the desired change while the Class 2 or 3 procedures are carried out. Therefore, the Agency believes that the framework in today's rule is appropriate and consistent with the definitions established for the three classes.

For each type of unit in Appendix I, EPA has defined general criteria as discussed above to be used in determining 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, EPA believes that they are sufficiently specific to delineate Classes 2 and 3 modifications.

6. General Approach to Defining Unit-Specific Changes

This section of the preamble describes EPA's classification of permit modifications involving the various types of hazardous waste management units at a facility. In general, EPA has 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, EPA has identified additional changes that are appropriate for specific units.

i. *Tanks and Containers.* The permitting standards for containers and tanks are found in 40 CFR Part 264, Subparts I and J. Because of the similarities of the classifications for these units, they are discussed together in this preamble. Furthermore, the Agency has combined "tank storage" and "tank treatment" into a single section. 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.

Tank system and container changes or additions resulting in a capacity increase of 25 percent or less qualify as Class 2 modifications as long as they do not involve other changes that require a Class 3 modification (i.e., treatment of new wastes using a different tank design or process—discussed later in this section of the preamble). This allows modest capacity growth at a facility without the full-scale procedures for major modifications, but with an appropriate level of public notice and participation. Any change leading to an increase of more than 25 percent requires 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 initial 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 increases for the specific type of unit must follow the Class 3 process.

Another example that illustrates the limited nature of this Class 2 provision is 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 through a Class 2 change (subject to the 25 percent limit), but the addition of tanks is a Class 3 modification since there was no permitted tank capacity.

Several commenters argued that F(2), modification of a container unit without increasing the capacity, should be reclassified from Class 2 to Class 1 with prior Agency approval. One example is the addition of a roof to a container unit. EPA believes that the addition of a roof to a container unit without alteration of the containment system is an appropriate Class 1 modification and has added this to Appendix I as Item F(2)(b). Other unspecified changes in this category, however, still fall within the definition of Class 2 modifications: Changes to improve the design of hazardous waste management units without substantially altering the conditions of the permit or reducing protection of human health or the environment.

In developing the rule, EPA considered 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 often found in temporary or mobile treatment units (MTUs). EPA recognizes the growing interest 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, and in conducting closure and corrective action. To address this issue, EPA proposed in Item G(1)(d) that new tanks performing these functions be allowed to operate for 90 days or less under Class 1 procedures, with prior Director approval. New tanks performing these functions for more than 90 days would be addressed under Class 2 procedures, even if they involved a greater than 25 percent increase in the facility's tank capacity (e.g., if the facility in question had limited or no tank capacity).

Introduction of temporary tank treatment units might also require changes in ancillary plans, such as closure, contingency, or personnel training plans. In this case, these changes are considered part of the overall permit modification required to introduce these units at the facility, and will be approved under Class 1 procedures as well.

Comment was specifically requested on the classification of the temporary (i.e., less than 90 days) addition of tanks to perform neutralization, dewatering, phase separation, or component separation (G(1)(d)). Three commenters supported the classification of these changes as Class 1 with prior Agency approval, while none opposed it. In light of these comments, this modification has been identified as Class 1 with prior Agency approval in the final rule.

One additional commenter argued that stabilization should be added to the treatment activities included in Items G(1) (c) and (d). EPA acknowledges that this suggestion would simplify and expedite pretreatment of wastes at the time of disposal or unit closure. Further, the Agency believes that the requirement of Director approval would ensure that the stabilization takes place in conformance with Part 264 standards. However, the Agency also acknowledges that stabilization is a more complex process than the four processes identified in G(1)(d), and it recognizes the concerns of the negotiating committee and others about the addition of new units at facilities. Therefore, the Agency is not prepared at this time to include stabilization units in Category G(1)(d). It should be noted, however, that stabilzation tanks—particularly when used for closure and corrective action—may often be eligible for temporary authorizations under § 270.42(e).

Item G(3) in the proposal would have allowed replacement of tanks as a Class 1 modification, as long as the new tank had a capacity of +/− 10% of the old tank. However, the facility owner or operator was prohibited from using the additional capacity. Comment was requested on whether it is necessary to prohibit the owner/operator's use of the additional 10% capacity. Commenters overwhelmingly opposed the prohibition, arguing that such a prohibition would be difficult to implement, monitor, and enforce. EPA agrees and has removed the prohibition from G(3). The 10 percent variation would be limited to a maximum of 1,500 gallons since tanks of 15,000 gallons or more are usually made to order and therefore would not have to deviate significantly from the original tank size.

One commenter stated that the proposed exclusion in G(1)(a) (which lists as Class 3 the addition or modification of a tank unit leading to a greater than 25 percent increase in capacity) should refer to G(1)(d) (less than 90-day units) rather than G(1)(c) (greater than 90-day units). The final rule includes an exclusion for both G(1)(c) and G(1)(d) because EPA does not believe that a capacity limitation should apply for either of these modifications.

Several commenters asked EPA to clarify that permit modifications would not be required where tanks (or containers) were operated at a facility in a manner that was exempt from RCRA permitting. EPA, therefore, explicitly acknowledges that units excluded from the permit standards of Part 264 would not be subject to permit modification procedures. Examples of such units are tanks or containers excluded under the generator accumulation provisions of § 262.34, the exemptions for wastewater treatment and neutralization tanks of § 264.1(g)(6), and the closed loop recycling exclusion of § 261.4(a)(8).

ii. *Surface Impoundments.* The surface impoundment permitting standards of 40 CFR Part 264, Subpart K are designed to prevent any migration of wastes out of the impoundment to adjacent soil, ground-water, or surface water. EPA has decided to allow Class 2 permit modifications involving surface impoundments only under the following circumstances: (1) Changes to an impoundment that do not increase the unit's capacity and that do not modify the liner, leak detection system, or leachate collection system, (2) changes to management practices at the impoundment, and (3) addition of new wastes under certain circumstances (as discussed in Section IV.C.5 of the preamble). Class 3 permit modifications are required for other changes, such as increased capacity or replacement of an impoundment. This approach is consistent with the proposal.

One commenter questioned how an improvement to a liner would be classified under Section H. The commenter's confusion on this point reflected the fact that the section on surface impoundment modifications in Appendix I of the proposal was not as complete as the sections for comparable units, such as landfills and waste piles. The final rule has been modified so that the surface impoundment modifications parallel those for landfills and unenclosed waste piles. This revision answers the commenter's concern; improvement to a liner without increasing the capacity of the impoundment would now be processed as a Class 2 change under H(3).

iii. *Waste Piles.* EPA has 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. Since unenclosed waste piles are subject to essentially the same design, operating, monitoring, and inspection requirements as landfills, the Agency has 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 for enclosed waste piles.

Note that Item I(1)(b) treats unit changes or additions resulting in a capacity increase of 25 percent or less as Class 2 modifications. This is the same as for tank and container units. Further discussion of the operation and limitations of this Class 2 change can be found in Section IV.C.6.i above.

One commenter pointed out correctly that two references to § 265.250(c) in modification I should read § 264.250(c). This change has been made. Another commenter argued that Item I(3) should be reclassified as Class 2 unless the replacement waste pile will be in the same location as the old one. The commenter is concerned that the location will influence the structural stability of the enclosure and the potential for flooding. However, EPA disagrees because the unit must be of the same design as the previous unit and meet all of the waste pile conditions in the permit.

iv. *Landfills.* The permitting standards for landfills are found in 40 CFR Part 264, Subpart N. The list of permit modifications for landfills are presented in Section J of Appendix I. (As discussed above, these modifications also apply to unenclosed waste piles.)

EPA lists most changes at landfill facilities as Class 3 modifications. Class 2 applies only to changes that: (1) Do not affect a liner, leachate collection or detection system, run-off control or final cover system, (2) affect management practices at the landfill, and (3) involve the addition of new wastes under certain circumstances (see Section IV.C.5 of the preamble).

v. *Land Treatment Units.* The list of modifications to land treatment facilities relate primarily to changes in land treatment operating practices, monitoring of the unsaturated zone, and the treatment demonstration. The items listed are specific and self-explanatory.

In general, commenters on the proposal suggested the reclassification of certain land treatment permit modifications to expand the scope of Class 1 changes. One commenter suggested dividing K(2), modification of run-on control, into K(2)(a) for changes that decrease the amount of run-on (Class 1) and K(2)(b) for other changes (Class 2). The same commenter also suggested dividing K(3), modification of run-off control systems, into K(3)(a) for changes that involve management of non-hazardous run-off (Class 2) and K(3)(b) for changes that involve management of hazardous run-off (Class 3). Two commenters suggested that K(6) should be revised to split out any practice which would only lower the rate of waste application and to allow this change to be Class 1. Although the intent of the commenters is understandable, the Agency is particularly concerned about run-on and run-off systems at land treatment facilities. Therefore, EPA is amending K(6) to allow Class I procedures for activities that only decrease the waste application rate, but is not amending K(2) and K(3). The Agency, however, emphasizes that most of the concerns of the commenter could be addressed through carefully written permits, allowing flexibility in run-off and run-on standards.

Three commenters argued that K(7), which addresses certain changes in management practices, should be reclassified as a Class 1 modification for activities that improve the efficiency and operation of land treatment operations. EPA agrees that improvements in land treatment processes should be encouraged. However, it can be a difficult question in any given circumstance to determine whether a specific change will lead to an improvement. Therefore, the Agency has not revised K(7). At the same time, the Agency believes that many of the concerns identified by the commenters can be addressed through reasonable flexibility in permit writing. In addition, a land treatment owner or operator wishing to experiment with new methods to improve treatment might in some cases qualify for a temporary authorization.

One commenter stated that K(12), which deals with changes in background levels, should be a Class 2 modification to be consistent with proposed C(6), since both concern the establishment of background values. EPA agrees that these two items are similar and should have comparable classifications. Thus, item K(12) has been reclassified as Class 2 to be consistent with the previously discussed ground-water classification.

One commenter argued that K(15), minor changes to a land treatment permit to reflect the results of the treatment demonstration, is basically the same as a minor modification under the current regulations and supported the reclassification of this item as a Class 1 modification. Since the procedures for a minor modification and a Class 1 modification with prior Director approval are similar, and the Agency is not aware of any difficulties caused by application of the minor modification procedures to these situations, K(15) is listed as a Class 1 modification, with prior Director approval, in the final rule.

EPA has made several conforming changes to the land treatment demonstration permitting provisions of § 270.63. Section 270.63(d) formerly specified procedures for modifying the second phase of a land treatment permit based on results of field tests or laboratory analyses. However, these procedures were designed, in part, to provide the owner or operator an opportunity to appeal the Director's decision on conditions in the second phase permit. Since this rule's 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, § 270.63(d)(2) no longer will reference minor modifications. In addition, as a conforming change EPA has deleted the reference to minor modification in Section (d)(1), and combined existing Sections (d)(3) with (d)(1) for simplicity.

vi. *Incinerators.* Section L of Appendix I presents the classifications of permit modifications for incinerators. This Section is slightly reorganized from the proposal. Items L(1) and (2) address modifications to incinerators 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(3) specifies particular unit modifications that require the Class 3 approval process even if these changes result in less than a 25 percent capacity increase. This is because they can directly affect the achievement of the

performance standards specified in the permit.

Changes in Items L(1), (2), and (3) require trial burns unless the Director decides that the information that would be gained through the trial burn can be reasonably developed through other means. Items L(1), (2), and (3) allow the Director to waive the required trial burn if the permittee can 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 language is consistent with existing incinerator regulations. This language also appears in Items L(5)(a) and L(6)(a).

In the proposal, replacement of unit components with functionally equivalent components, was addressed in proposed Item L(3). This item has been dropped from the final rule since it is covered by item A(3). One commenter suggested that this provision should allow replacement of incinerator unit components with improved components. EPA believes that the definition of "functionally equivalent" provided in § 270.2 allows sufficient latitude for these types of changes under A(3). See preamble Section IV.C.2 for further discussion on Item A(3).

Item L(4) addresses changes to incinerator operating or monitoring requirements not likely to affect compliance with 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 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(5). Alteration of operating requirements that relate to the unit's capability to meet performance standards are designated Class 3 modifications. Changes to other operating requirements can be made under the Class 2 process. Trial burns may be required for the changes listed in Item L(5)(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 permit conditions that apply to the incinerator before and immediately after the trial burn is conducted. Such changes are in Item L(7). Note that Items L(7) (b), (c), and (d) are essentially unchanged from the current minor modifications in § 270.42 (k), (j), and (i).

One commenter expressed the opinion that positive changes designed to improve the pollution control mechanisms or the destruction capacities of incinerators under Item L(3) (formerly Item L(1)(c)) should be encouraged through a Class 1 designation. This is not feasible because technical changes to incinerator systems cannot easily be determined to be "positive" changes. Thus, a higher level of review, perhaps including a trial burn, is required to evaluate the actual effects of these types of system alterations on the environment.

Another commenter requested that improved inspection or recordkeeping procedures in Item L(5)(c) be Class 1 modifications. This issue was addressed earlier—increased inspections or recordkeeping would not adversely affect permit conditions and therefore do not require modification. The same commenter argued that wastes identified in the same waste codes as those previously incinerated should not be considered new wastes for the purposes of permit modification under Item L(6). The language of L(6) clearly indicates that the determining factor for whether a waste is considered new or not is the presence or absence of a Principal Organic Hazardous Constituent (POHC) that is more difficult to burn than authorized by the permit. Thus, the waste code is relevant only to the extent that wastes with the same waste code may have similar POHCs. EPA is not amending this modification as suggested because the incinerator permit standards are based on the presence or absence of POHCs, not on waste codes.

Another commenter suggested that the term "more difficult to incinerate" in L(6)(a) and L(6)(b) be replaced with "having a heat of combustion lower than the minimum." Heat of combustion has been suggested in past EPA guidance as one method to rank the incinerability of compounds. However, other incinerability ranking methods may be preferable to heat of combustion on a technical basis. Therefore, the suggested revision would make the regulation overly specific and narrow, and has not been incorporated.

An additional commenter argued that L(8), substitution of an alternate fuel, should be reclassified Class 2 or 3, due to the concern that fuel substitution could substantially alter the performance of the incinerator. EPA does not believe that this is a major concern since compliance with the destruction and emission levels required by the regulations can be maintained by making adjustments when various fuels are used so that the incinerator maintains the operating conditions at which its destruction and removal efficiency (DRE) was demonstrated in the trial burn, as specified in the permit.

7. 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 classification of specific closure plan changes is presented in Appendix I, Item D(1).

Item D(1) classifies various changes to facility closure plans. This item has been somewhat revised since the proposal, because of public comment and further analysis of closure procedures. The major changes are discussed below.

First, Item D(1)(a)—estimate of maximum extent of operations and maximum inventory of wastes on site—is now categorized as a Class 1 modification with Director approval. In the proposal, the two estimates were treated separately. A change in the estimate of the maximum extent of operation was proposed to be Class 2, and a change in the estimate of maximum inventory of wastes was identified as a Class 1 change (without Director approval). These modifications, however, are of minor significance to the overall management of the facility and to human health and safety. They reflect the owner or operator's estimate of his or her actual and future activities at the facility, but the estimates in no case could exceed the facility's permitted capacity. Therefore, EPA believes that only limited review is necessary. However, because these estimates are critical in defining the scope of the closure plan and, in particular, the amount of financial assurance carried for closure, EPA believes that prior approval of changes in estimates should be required before the Class 1 modification takes effect. Consequently, changes to these estimates are established as Class 1 modifications with prior Director approval in today's rule.

Second, Item D(1)(b)—changes in the closure schedule for any unit, including approval of closure periods longer than 90 days or 180 days under § 264.113 (a) and (b)—was proposed as a Class 2 modification. The extension of the closure period beyond 90 and 180 days had previously been classified as a

minor modification. EPA does not believe that the procedures for requesting this modification should be substantially changed, and therefore is classifying extensions of the closure period under § 264.113 (a) and (b) as Class 1 modifications, with the Director's approval. In general, changes in closure schedules will involve modification of interim dates within the 90 and 180-day closure time periods. Even in cases where the period is extended beyond these dates, the changes will be relatively minor, as long as other modifications of the closure plan were not involved. Typically, they reflect delays due to equipment problems, bad weather, or similar factors. Where the delay also involves substantive modifications of the closure plan, those modifications have to undergo the permit modification procedures appropriate for that class of change.

Two other entries in Item D(1) have also been changed from the proposal in response to comments. First, D(1)(c), changes in estimates of the expected year of closure, has been changed from Class 1 to Class 1 with Director approval. Although a change in estimated year of closure is minor in terms of public health and the environment, it is important in determining the pay-in period for the closure trust fund. (In fact, current regulations require the owner or operator to estimate the date of final closure only if he or she is relying on a trust fund for financial assurance for closure.) Agency approval of changes in this estimate is necessary, because they may affect the pay-in rate to a trust fund and therefore the facility's financial assurance. Second, D(1)(d), changes in procedures for decontamination of facility equipment or structures, has been changed from Class 2 to Class 1, with Director approval. The Part 264 closure regulations establish general standards for decontamination, which have to be met in every case. The specific procedural details of how decontamination will be achieved are technical and generally best suited for a Class 1 designation.

Items D(2) and D(3) deal with permit modifications to allow the use of new units—for example, treatment tanks—during closure. In some cases, the use of specific units during closure may be anticipated in sufficient detail in the closure plan, and therefore a permit modification will not be necessary. However, the use of units not covered in the closure plan will generally require a permit modification to amend the plan (see § 264.112(c)). In practice, it is often not 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, EPA expects that facility owners will frequently introduce units during closure that were not included in the original closure plan.

The Agency has decided that the addition of units to perform closure should generally carry the same classification as adding the same types of units for other reasons (discussed in preceding sections of the preamble). However, the Agency believes it is not 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, as would be the case if such expansion occurred at an operating facility. Closure activities are generally of relatively short duration. Capacity increases resulting from the addition of these units to perform closure are temporary because following their use during closure, these units will also be closed. Therefore, the addition of these three types of units during closure are specified as Class 2. Items D (2) and (3) in the Appendix I contain the classification of these closure activities.

EPA has also considered the special case of tanks that 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. Therefore, in today's rule, EPA has classified the temporary addition of these specific tank units as a Class 1 modification with required Agency approval. (*See* Item D(3)(f).) This is consistent with the classification for these same units if used for fewer than 90 days to perform non-closure activities.

Comment was requested on whether the temporary addition of tanks that perform neutralization, dewatering, phase separation, and component separation for closure activities was appropriately classified in the proposal as a Class 1 modification with prior Agency approval. One comment supporting this modification was received. Thus, Item D(3)(f) has not been changed from the proposal.

Many additional changes beyond those listed in Appendix I are likely to be required for closure plans. EPA and the Negotiating Committee did not attempt to identify every possible change, for example, in the unit-specific technical standards for closure. Where a specific change has not been identified, the owner or operator would have the option of using the Class 3 procedures, or requesting the Agency to classify the change under § 270.42(d). EPA, however, emphasizes that many potential changes in closure plans, such as changes in sampling or monitoring, are already included elsewhere in Appendix I. EPA also reiterates that, where the introduction of a new unit will require the modification of a facility's closure plan, review of the closure plan modification would take place under the same procedures as those required for the introduction of the new unit. For example, where new tanks are added to a facility as a Class 2 change, modifications in the closure plan to account for those tanks would take place under Class 2 procedures as well.

8. Post-Closure

Permitted facilities that must conduct post-closure activities must have an approved post-closure plan in their permits and must eventually have a post-closure permit. (*See* §§ 264.118(a) and 270.1(c).) Modifications to post-closure conditions are classified in Section E of Appendix I.

9. HSWA Corrective Action

Today's rule does not specifically address permit modifications that will take place as part of the HSWA corrective action process. Corrective action, however, will likely require one or more permit modifications after the permit has been issued. For example, corrective action permits now being issued by the Agency require a major permit modification at the time the Agency approves a remedy. During the permit modification regulatory negotiation, EPA and the other negotiators considered the possibility of specifically addressing corrective action and categorizing potential modifications as Class 1, 2, or 3. The negotiators, however, decided not to address such modifications, because the corrective action program was still under development and likely permit modification points were not yet well defined. Instead, EPA will explicitly address corrective action permit modifications as part of the section 3004(u) corrective action rule it is now developing. In the meantime, individual permits will specify where permits will be modified for corrective action, and modifications will generally take place under the procedures of § 270.41.

Although today's rule does not specifically address permit modifications that will occur during the corrective action process—such as at the point of remedy approval—it nevertheless provides significant flexibility for corrective actions voluntarily undertaken by the owner/operator. For example, temporary authorizations would allow an owner/operator to remediate specific problems more promptly, and the reduced procedures for certain new treatment units will promote voluntary action by owner/operators in anticipation of formal EPA action. Therefore, today's rule should substantially facilitate corrective action at permitted facilities.

10. Location of Minor Modifications in Today's Rule

In today's restructuring of §§ 270.41 and 270.42, the minor modifications previously located in § 270.42 (a) through (p) are now contained in Appendix I of § 270.42. For the convenience of the reader, the following chart cross references the former paragraphs of § 270.42 with their location in Appendix I, and the designated modification class is provided. Note that the minor modifications that addressed management of restricted wastes (§ 270.42 (o) and (p)) are not covered under a single item in the Appendix. Rather, the specific classification under today's rule is dependent on the type of unit involved, the magnitude of additional unit capacity requested, and other factors. However, a temporary authorization may be obtained for these restricted waste activities as specified in § 270.42(e)(3)(ii)(B). Similarly, although several Appendix I categories address the land treatment modifications in the former § 270.42(1), temporary authorizations should be available for such changes.

TABLE 1.—LOCATION OF FORMER MINOR MODIFICATIONS IN APPENDIX I

Previous § 270.42 Provision	Appendix I Cite	Class
(a) Typographical errors	A.2	1.
(b) More frequent monitoring or reporting	A.4.a	1.
(c) Change in interim compliance date in a schedule of compliance	A.5.a	1.[1]
(d) Change in owner/operator	A.7	1.[1]
(e) Change in emergency coordinator or equipment	B.6.b	1.
(f) Change estimates of maximum inventory	D.1.b	1.[1]
(g) Change estimates of expected year or schedules for final closures	D.1.b	1.[1]
	E.4	1.
(h) Extend time allowed for closure	D.1.c	1.[1]
(i) Minor change in operating requirements in the permit to reflect results of trial burn	L.6.d	1.[1]
(j) Minor change in operating requirements for conducting a trial burn	L.6.c	1.[1]
(k) Extension of up to 720 hours to determine operational readiness	L.6.b	1.[1]
(l) Minor change in land treatment program to improve treatment	Various (see text)	
(m) Minor change in land treatment permit to reflect results of treatment demonstration	K.15	1.[1]
(n) Allow second land treatment demonstration	K.16	1.[1]
(o) Allow treatment or storage of restricted waste in existing units	§ 270.42(e)(3)(ii)(B)	Temporary authorization.
(p) Allow treatment or storage of restricted waste in new tank or container units provided a major modification is requested.	§ 270.42(e)(3)(ii)(B)	Temporary authorization.

Note: Class 1[1] requires prior Director approval.

D. Conforming Changes to Permitting Regulations

As discussed in the preamble to the proposal, EPA has identified several other areas in the current RCRA permitting regulations—in addition to §§ 270.41 and 270.42—that need to be made consistent with today's rule. One commenter suggested three additional items that should also be changed. Therefore, today's rule adopts conforming changes to Parts 124, 264, 265, and 270 as presented in the proposal, with the additions suggested by the commenter, as discussed below.

Section 124.5 generally identifies which permit modifications must follow the full Part 124 permitting procedures. In § 124.5(c) we are adding 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. Also, § 124.5(c)(3) is modified today to remove the reference to RCRA "minor modifications" and replace it with "Classes 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 rule allows certain changes to closure or post-closure plans as Class 1 modifications, 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. (See Section IV.B.1 for detailed discussion.) There is no Agency approval necessary for the Class 1 changes to these plans. Therefore, EPA is amending §§ 264.112(c) and 264.118(d) to allow "written notification" of Class 1 modifications. Also in Part 264, the comment at § 264.54 is deleted since it describes minor modifications to contingency plans that would be inconsistent with today's new classification system.

Several conforming changes are identified for Part 270. First, three definitions are added to § 270.2. "Facility mailing list" is defined as meaning the list maintained by the Agency in accordance with § 124.10(c)(viii); this list is 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, EPA is adding 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 made to § 270.30(1)(2) since this provision did not allow the permittee to use the modified portion of the facility until a certification was submitted to the Agency indicating the modification was in accordance with the permit and the Agency has an opportunity to inspect the modification. Under today's modification scheme, the requirements of § 270.30(l)(2) are not appropriate in many cases, particularly for Class 1 modifications and automatic authorizations. Therefore, the amendment to this provision allows the use of the modified portion of the facility as long as such use is in conformance with § 270.42.

Finally, EPA is deleting the reference to "minor modification" in § 270.40(a) (transfer of permits by modification) and § 270.62 (incinerator permits). These provisions continue to reference the permittee-initiated modifications that are available under § 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 permit application. (See § 124.5(c).) Today's changes to § 270.42 provide a more specific indication of the information that the permittee would have to submit. However, even with these changes, each permittee seeking a permit modification will have to decide the most appropriate way to assemble his or her submission.

In the proposal, EPA solicited comments on the desirability of a standardized form designed specifically for permit modification requests. The proposal discussed general objectives for such a form and suggested items that might be included. Three commenters supported the development of a form, while one commenter opposed the use of a form saying that the format for a permit modification should be left up to the permittee to proivde maximum flexibility.

EPA is not pursuing any further action on the permit modification form in today's rulemaking, but will instead continue to consider the merits of that approach for possible future action.

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 the Federal progam. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State where the State was authorized to issue permits. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New 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, the HSWA requirements are applied by EPA in authorized States in the interim.

B. Effect on State Authorizations

Today's rule is imposed pursuant to pre-HSWA authority. Therefore, these new permit modification procedures are applicable in those States that do not have interim or final authorization. In authorized States, the new procedures may not be used to modify State-issued permits unless the State revises its program to adopt equivalent requirements under State law. However, EPA may use today's permit modification procedures in authorized States where necessary to implement HSWA provisions (e.g., for modifying EPA-issued HSWA permits to allow compliance with corrective action, land disposal restrictions, or other HSWA requirements).

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 in today's rule are not considered to be more stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent to the provisions contained in today's rule.

The Agency recognizes that there are several aspects to today's rule that could be viewed as more stringent than the current major/minor modification system. For example, there are public notification requirements for Class 1 modifications, whereas no notification is required for similar minor modifications. However, these notifications were established as a tradeoff for allowing the facility to proceed with the changes without approval. (There is no counterpart in the existing minor modification process for these immediate modifications without prior approval.) As in this example, the other aspects of today's rule that could be considered more stringent are integral parts of this new modification approach and are not applicable to the existing major/minor modification process. Therefore, the Agency decided that today's rule, when considered in its entirety, is not more stringent than the major/minor modification process which it replaces.

C. State Authorization Options

Although today's permit modification rule is deemed to be not more stringent than the major/minor modification process it replaces, EPA believes that this new approach will contribute to more efficient and effective State programs. The need to revise the existing permit modification process was acknowledged by the Regulatory Negotiation Committee that developed the basis for the September 23, 1987 proposed rule, and the vast majority of commenters on the proposal echoed that changes in the system are desirable. For these reasons, as well as the other reasons discussed throughout the preamble, EPA strongly encourages states to adopt this permit modification rule as promulgated.

Several States indicated concerns about the automatic authorization ("default") provision in the Class 2 process since it would conflict with existing state laws. Although the default provision is an important feature of today's rule, the Agency does not want to prevent states from adopting these new permit modification procedures solely because the state is unable or unwilling to pick up the default mechanism. Therefore, states may receive authorization for today's rule without incorporating the Class 2 default

procedure; however, such states will be expected to process these Class 2 modification requests promptly (e.g., generally within the 120 days allowed in the Class 2 process), or within 300 days if a temporary authorization is in effect). It is especially important that prompt action be taken on facility modifications involving corrective action or new treatment capabilities.

Even in States that may want to retain the basic major/minor modification process, there are certain parts of today's rule that they may want to adopt. States may amend their programs to incorporate selected portions of this rule so long as the overall effect of their program is no less stringent than the Federal program. Examples of possible components of today's rule that States could adopt are discussed below.

New Waste Provision

Agency efforts to promulgate a revised toxicity characteristic and other actions to list new wastes will generate a significant number of permit modifications. The new procedure in § 270.42(g) corrects an inequity in the treatment of permitted facilities in comparison to interim status facilities and should result in much less disruption of waste management when new wastes are identified.

Class 1 Modifications

These Class 1 procedures could be added as a supplement to the major/minor system to provide for prompt implementation of the Class 1 changes identified in Appendix I. In this case, those Class 1 changes that require prior director approval should follow the minor modification procedures while the remaining Class 1 changes would just require notification to the Director. Another alternative would be to just add all the Class 1 items in Appendix I to the state's list of minor modifications.

Temporary Authorizations

With this mechanism the Director can allow a facility to respond promptly to closure activities, corrective action, sudden changes in the types or quantities of wastes managed at the facility, etc.

VII. Effective Date

This rule will 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 today's 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 are effective 30 days after promulgation, as provided under the Administrative Procedure 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 rule 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. Today's 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 amendments in today's rule 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 265

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.

Dated: September 12, 1988.

Lee M. Thomas,

Administrator.

Therefore, Subchapter I of Title 40 is 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), or 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 "Classes 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: 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, paragraph (c) introductory text, (c)(1), and (c)(2) 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 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

6a. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

7. In § 265.112, the last sentences in paragraphs (c)(3) and (c)(4) are revised to read as follows:

§ 265.112 Closure plan; amendment of plan.

(c) * * *

(3) * * * If the amendment to the plan is a Class 2 or 3 modification according to the criteria in § 270.42, the modification to the plan will be approved according to the procedures in § 265.112(d)(4).

(4) * * * If the amendment is considered a Class 2 or 3 modification according to the criteria in § 270.42, the modification to the plan will be approved in accordance with the procedures in § 265.112(d)(4).

* * * * *

8. In § 265.118, the last sentence in paragraph (d)(3) and the third sentence in paragraph (d)(4) are revised to read as follows:

§ 265.118 Post-closure plan; amendment of plan.

(d) * * *

(3) * * * If the amendment to the post-closure plan is a Class 2 or 3 modification according to the criteria in § 270.42, the modification to the plan will be approved according to the procedures in § 265.118(f).

(4) * * * If the amendment to the plan is considered a Class 2 or 3 modification according to the criteria in § 270.42, the modifications to the post-closure plan will be approved in accordance with the procedures in § 265.118(f). * * *

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

10. Section 270.2 is amended by adding the following terms and definitions in alphabetical order:

§ 270.2 [Amended]

* * * * *

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

* * * * *

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

* * * * *

11. 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.

* * * * *

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

§ 270.30 Conditions applicable to all permits.

* * * * *

(l) * * *

(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:

* * * * *

13. Section 270.40 is revised to read as follows:

§ 270.40 Transfer of permits.

(a) 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 § 270.40(b) or § 270.41(b)(2)) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in

accordance with § 270.42. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 264, Subpart H (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator that he or she no longer needs to comply with Subpart H as of the date of demonstration.

14. Section 270.41 is amended by revising the section heading, the introductory text and paragraph (a)(3) and by removing paragraph (a)(5), and redesignating existing paragraph (a)(6) as (a)(5) 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 authorized 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.

* * * * *

15. 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. Along with the notice, the permittee must provide the applicable information required by §§ 270.13 through 270.21, 270.62, and 270.63.

(ii) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the Director in accordance with 40 CFR 124.10(c)(viii), and the appropriate units of State and local government, as specified in 40 CFR 124.10(c)(ix). This notification must be made within 90 calendar days after the change is put into effect. For the Class I modifications that require prior Director approval, the notification must be made within 90 calendar days after the Director approves the request.

(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) Class 1 permit modifications identified in Appendix I by an asterisk may be made only with the prior written approval of the Director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in § 270.42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the Director of this decision in the notice required in § 270.42(b)(1).

(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 §§ 270.13 through 270.21, 270.62, and 270.63.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(ix) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within 7 days before or after 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 earlier than 15 days after the publication of the notice required in paragraph (b)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting

must be held to the extent practicable in the vicinity of the permitted facility.

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

(6)(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) Determine that the modification request must follow the procedures in § 270.42(c) for Class 3 modifications for the following reasons:

(*1*) There is significant public concern about the proposed modification; or

(*2*) The complex nature of the change requires the more extensive procedures of Class 3.

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

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

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

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

(B) Deny the request; or

(C) Determine that the modification request must follow the procedures in § 270.42(c) for Class 3 modifications for the following reasons:

(*1*) There is significant public concern about the proposed modification; or

(*2*) The complex nature of the change requires the more extensive procedures of Class 3.

(D) 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. If the Director approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraphs (b)(6) (i), (ii), or (iii) of this section, such action cancels the temporary or automatic authorization.

(iv)(A) In the case of an automatic authorization under paragraph (b)(6)(iii) of this section, or a temporary authorization under paragraph (b)(6) (i)(D) or (ii)(D) of this section, if the Director has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(*1*) The permittee has been authorized temporarily to conduct the activities described in the permit modification request, and

(*2*) Unless the Director acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(B) If the owner/operator fails to notify the public by the date specified in paragraph (b)(6)(iv)(A) of this section, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(v) Except as provided in paragraph (b)(6)(vii) of this section, if the Director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, 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 activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 CFR Part 265.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Director must consider all written comments submitted to the Agency during the public comment period and must respond in writing to all significant 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 or for reclassifying a modification as a Class 3.

(7) The Director may deny or change the terms of a Class 2 permit modification request under paragraphs (b)(6) (i) through (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 beginning 60 days after the submission of the request unless the Director establishes a later date for commencing construction and informs the permittee in writing before day 60.

(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, 270.62 and 270.63.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(ix) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the 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);

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

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

(6) After the conclusion of the 60-day 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 significant written comments received during the 60-day comment period.

(d) *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 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 (d)(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 minor changes that keep the permit current with routine changes to the facility or its operation. These changes do no 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 under the facility permit,

(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.

(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 not more than 180 days.

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

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

(B) Any Class 3 modification that meets the criteria in paragraph (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 send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Director and to appropriate units of State and local governments as specified in 40 CFR 124.10(c)(ix). This notification must be made within seven days of submission 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 allow treatment or storage in tanks or containers of restricted wastes in accordance with 40 CFR Part 268;

(C) To prevent disruption of ongoing waste management activities;

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

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

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

(i) The reissued temporary authorization constitutes the Director's decision on a Class 2 permit modification in accordance with paragraph (b)(6)(i)(D) or (ii)(D) of this section, or

(ii) The Director determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of paragraph (c) of this section are conducted.

(f) *Public notice and appeals of permit modification decisions.* (1) The Director shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The Director shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under § 270.42(b)(6) (iii) or (v).

(2) The Director's decision to grant or deny a Class 2 or 3 permit modification request under this section may be appealed under the permit appeal procedures of 40 CFR 124.19.

(3) An automatic authorization that goes into effect under § 270.42(b)(6) (iii) or (v) may be appealed under the permit appeal procedures of 40 CFR 124.19; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal has been granted pursuant to § 124.19(c), notwithstanding the provisions of § 124.15(b).

(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 in existence as a hazardous waste facility with respect to the newly listed or characterized waste on the effective date of the final rule listing or identifying the waste;

(ii) Submits a Class 1 modification request on or before the date on which the waste becomes subject to the new requirements;

(iii) Is in compliance with the standards of 40 CFR Part 265;

(iv) In the case of Classes 2 and 3 modifications, also submits a complete permit modification request within 180 days after the effective date of the rule listing or identifying the waste; and

(v) In the case of land disposal units, certifies that such unit is in compliance with all applicable Part 265 ground-water monitoring and financial responsibility requirements on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous. If the owner or operator fails to clarify compliance with these requirements, he or she shall lose authority to operate under this section.

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

16. In § 270.62, the last sentence of paragraph (a) 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.

* * * * *

17. 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).

18. Section 270.42 is amended by adding Appendix I to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

Appendix I to § 270.42—Classification of Permit Modification

Modifications	Class
A. *General Permit Provisions*	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.	1
b. Other changes	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the 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.	[1] 1
7. Changes in ownership or operational control of a facility, provided the procedures of § 270.40(b) are followed.	[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 or decrease the amount of training given to employees.	2
b. Other changes	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures).	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.	1
c. Removal of equipment from emergency equipment list.	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.	1
Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.	
C. *Ground-Water Protection*	
1. Changes to wells:	
a. Changes in the number, location, depth, or design 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
2. Changes in ground-water sampling or analysis procedures or monitoring schedule, with prior approval of the Director.	[1] 1
3. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the Director.	[1] 1
4. Changes in point of compliance.	[1] 2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):	
a. As specified in the groundwater protection standard.	3
b. As specified in the detection monitoring program	2

Modifications	Class
6. Changes to a detection monitoring program as required by § 264.98(j), unless otherwise specified in this appendix	2
7. Compliance monitoring program:	
a. Addition of compliance monitoring program as required by §§ 264.98(h)(4) and 264.99	3
b. Changes to a compliance monitoring program as required by § 264.99(k), unless otherwise specified in this appendix	2
8. Corrective action program:	
a. Addition of a corrective action program as required by §§ 264.99(i)(2) and 264.100	3
b. Changes to a corrective action program as required by § 264.100(h), unless otherwise specified in this Appendix	2
D. *Closure*	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the Director	[1] 1
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Director	[1] 1
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Director	[1] 1
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Director	[1] 1
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix	2
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 approval of the Director	[1] 1
E. *Post-Closure*	
1. Changes in name, address, or phone number of contact in post-closure plan	1
2. Extension of post-closure care period	2
3. Reduction in the post-closure care period	3
4. Changes to the expected year of final closure, where other permit conditions are not changed	1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure	2
F. *Containers*	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity	3
b. Resulting in up to 25% increase in the facility's container storage capacity	2
2:	
a. Modification of a container unit without increasing the capacity of the unit	2
b. Addition of a roof to a container unit without alteration of the containment system	1
3. Storage of different wastes in containers:	
a. That require additional or different management practices from those authorized in the permit	3
b. That do not require additional or different management practices from those authorized in the permit	2
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
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) and G(1)(d) of this appendix	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) of this appendix	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] 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 —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.	1
4. Modification of a tank management practice	2
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit	3
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
Note: See § 270.42(g) for modification procedures to be used for the management of newly lilsted or identified wastes.	
H. *Surface Impoundments*	
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity	3
2. Replacement of a surface impoundment unit	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system	2
4. Modification of a surface impoundment management practice	2
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	2
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes	
I. *Enclosed Waste Piles.* For all waste piles except those complying with § 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with § 264.250(c).	
1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity	2
2 Modification of waste pile unit without increasing the capacity of the unit	2

Modifications	Class
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	3
4. Modification of a waste pile management practice	2
5. Storage or treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit	3
b. That do not require additional or different management practices or different design of the unit	2
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
J. *Landfills and Unenclosed Waste Piles*	
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity	3
2. Replacement of a landfill	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system	2
5. Modification of a landfill management practice	2
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	2
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
K. *Land Treatment*	
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent	3
2. Modification of run-on control system	2
3. Modify run-off control system	3
4. Other modifications of land treatment unit component specifications or standards required in permit	2
5. Management of different wastes in land treatment units:	
a. That require a change in permit operating conditions or unit design specifications	3
b. That do not require a change in permit operating conditions or unit design specifications	2
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes	
6. Modification of a land treatment unit management practice to:	
a. Increase rate or change method of waste application	3
b. Decrease rate of waste application	2
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 replace 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 replace 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	2
13. Changes in sampling, analysis, or statistical procedure	2
14. Changes in land treatment demonstration program prior to or during the demonstration	2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Director's prior approval has been received	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	2
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. Changes 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
2. Changes 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
3. Modification of an incinerator unit 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 HCl 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
4. 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
5. 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	2
6. Incineration of different 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

Modifications	Class
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn	2
b. Authorization of up to an additional 720 hours of waste 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
8. Substitution of an alternate type of fuel that is not specified in the permit	1

[1] Class 1 modifications requiring prior Agency approval.

[FR Doc. 88-21903 Filed 9-27-88; 8:45 am]

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