



Ohio Administrative Code Rule 3745-50-51 Permit modifications.

Effective: June 12, 2023

(A) As used in this rule, "modification" means a change or alteration to a hazardous waste facility or the facility's operations that is inconsistent with or not authorized by the facility's existing permit or authorization to operate. "Modification application" means a request for a modification submitted in accordance with division (I) of section 3734.05 of the Revised Code. A hazardous waste facility permit may be modified at the request of the director or upon the written request of the permittee only if:

(1) The permittee desires to accomplish alterations, additions, or deletions to the permitted facility or to undertake alterations, additions, deletions, or activities that are inconsistent with or not authorized by the existing permit; or

(2) New information or data justify permit conditions in addition to or different from those in the existing permit; or

(3) The standards, criteria, or rules upon which the existing permit is based have been changed by new, amended, or rescinded standards, criteria, or rules, or by judicial decision after the existing permit was issued, and the change justifies permit conditions in addition to or different from those in the existing permit; or

(4) The permittee proposes to transfer the permit to another person.

(B) Owners or operators of facilities operating pursuant to paragraph (C)(1) of rule 3745-50-40 of the Administrative Code who submit modifications shall comply with this rule and, in lieu of the modification application submittal requirements of paragraph (D)(1)(b), (D)(2)(a), or (D)(3)(c) of this rule, shall submit a revised "Part A" permit application that:

(1) Describes the exact changes to be made to the facility; and



(2) Identifies the modification as either a "Class 1," "Class 2," or "Class 3" modification; and

(3) Explains why the modification is needed; and

(4) Provides the applicable information required by rules 3745-50-43 and 3745-50-62 of the Administrative Code.

(C) When a permit is modified, only the conditions subject to modification may be reviewed as part of the modification procedure.

(D) Modifications shall be classified by the director as "Class 1," "Class 2," or "Class 3" modifications. Modification requests classified as "Class 3" modifications shall be further classified by the director as "Class 3" modifications that are to be approved or disapproved by the director in accordance with either paragraph (D)(4) or (D)(5) of this rule. To determine whether a "Class 3" modification request shall be approved or disapproved in accordance with paragraph (D)(5) of this rule, the director shall use the criteria in paragraph (D)(3)(b) of this rule.

(1) "Class 1" modifications.

(a) Except as provided in paragraph (D)(1)(b) of this rule, the permittee may implement "Class 1" modifications listed in the appendix to this rule, or modifications classified as "Class 1" modifications by the director pursuant to paragraph (E) of this rule, under the following conditions:

(i) The permittee shall notify the director of the modification by certified mail or other means that establish proof of delivery within seven days after the change is implemented. This notice shall specify the changes made to permit conditions or supporting documents referenced by the permit and shall explain why the changes are necessary. Along with the notice, the permittee shall provide the applicable information required by rules 3745-50-43, 3745-50-44, and 3745-50-62 of the Administrative Code.

(ii) The permittee shall send a notice of the "Class 1" modification to all persons on the agency mailing list maintained by the director, the board of county commissioners of the county, the board of township trustees of the township, and the city manager or mayor of the municipal corporation in



which the hazardous waste facility is located. This notification shall be made within ninety days after the change is implemented. For "Class 1" modifications that require prior director approval, the notification shall be made within ninety days after the director approves the modification application.

(iii) Any person may request the director to review, and the director may, for cause, reject any "Class 1" modification. The director shall inform the permittee by certified mail if a "Class 1" modification is rejected, and explain the reasons for the rejection. If a "Class 1" modification is rejected, the permittee shall comply with the original permit conditions.

(b) "Class 1" modifications identified in the appendix to this rule by an asterisk may be made only with the prior written approval of the director. The director's prior written approval is also required for those modifications classified by the director as "Class 1" modifications that require prior written approval pursuant to paragraph (E) of this rule. The director shall approve or disapprove an application for a "Class 1" modification that requires the director's approval within sixty days after receipt of the modification application. The approval or disapproval by the director of a "Class 1" modification is not a final action that is appealable under Chapter 3745. of the Revised Code.

(c) For a "Class 1" modification, the permittee may elect to follow the procedures in paragraph (D)(2) of this rule for "Class 2" modifications instead of the procedures in paragraph (D)(1) of this rule. The permittee shall inform the director of this decision in the notice required in paragraph (D)(1)(a)(i) of this rule.

(2) "Class 2" modifications.

(a) "Class 2" modification applications shall be approved or disapproved by the director. For "Class 2" modifications listed in the appendix to this rule, or modifications classified as "Class 2" modifications by the director pursuant to paragraph (E) of this rule, the permittee shall submit a modification application to the director that:

(i) Describes the exact change to be made to the facility that would require the permit to be modified and the proposed changes to the permit conditions and supporting documents referenced by the permit;



(ii) Identifies the modification as a "Class 2" modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by rules 3745-50-43, 3745-50-44, and 3745-50-62 of the Administrative Code.

(b) The permittee shall send a notice of the modification application to all persons on the agency mailing list maintained by the director, the board of county commissioners of the county, the board of township trustees of the township, and the city manager or mayor of the municipal corporation in which the hazardous waste facility is located, and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within seven days before or after the date of submittal of the modification application to the director, and the permittee shall provide to the director evidence of the mailing and publication. The notice shall include:

(i) Announcement of a sixty-day comment period, in accordance with paragraph (D)(2)(e) of this rule, and the name and address of an Ohio EPA contact person to whom comments shall be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with paragraph (D)(2)(d) of this rule;

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

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

(v) Location where a copy of the modification application 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 that is being modified is available from the Ohio EPA contact person."

(c) The permittee shall place a copy of the permit modification application and supporting documents in a location accessible to the public in the vicinity of the facility.



(d) The permittee shall hold a public meeting no earlier than fifteen days after the publication of the notice required by paragraph (D)(2)(b) of this rule and no later than fifteen days before the close of the sixty-day comment period. The meeting shall be held, to the extent practicable, in the vicinity of the facility.

(e) The public shall be provided sixty days to comment on the modification application. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments shall be submitted to the Ohio EPA contact person identified in the public notice.

(f)

(i) No later than ninety days after receipt of the modification application, the director shall:

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

(B) Disapprove the application; or

(C) Determine that the modification application shall follow the procedures in paragraph (D)(3) of this rule for "Class 3" modifications for either of the following reasons:

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

(ii) The complex nature of the change justifies the more extensive procedures for "Class 3" modifications; or

(D) Approve the application, with or without changes, as a temporary authorization for a term of up to one hundred eighty days; or

(E) Notify the permittee that the director will decide on the application within the next thirty days.

(ii) If the director notifies the permittee of a thirty-day extension for a decision, the director shall



take one of the following actions no later than one hundred twenty days after receipt of the modification application:

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

(B) Disapprove the application; or

(C) Determine that the modification application shall follow the procedures in paragraph (D)(3) of this rule for "Class 3" modifications for either either:

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

(ii) The complex nature of the change justifies the more extensive procedures for "Class 3" modifications; or

(D) Approve the application, with or without changes, as a temporary authorization for a term of up to one hundred eighty days.

(iii) If the director fails to take one of the actions specified in paragraph (D)(2)(f)(i) or (D)(2)(f)(ii) of this rule by the one hundred twentieth day after receipt of the modification application, the permittee shall be automatically authorized to conduct the activities described in the modification application for up to one hundred eighty days, without formal agency action. The authorized activities shall be conducted as described in the permit modification application and shall be conducted in compliance with all applicable standards of Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code. If the director approves, with or without changes, or disapproves the modification application during the term of the temporary or automatic authorization provided for in paragraph (D)(2)(f)(i)(d), (D)(2)(f)(ii)(d), or (D)(2)(f)(iii) of this rule, such action shall replace the temporary or automatic authorization.

(iv)

(A) In the case of an automatic authorization under paragraph (D)(2)(f)(iii) of this rule, or a



temporary authorization under paragraph (D)(2)(f)(i)(d) or (D)(2)(f)(ii)(d) of this rule, if the director has not approved or disapproved the modification application within two hundred fifty days after receipt of the modification application, within seven days after that time, the permittee shall send a notice to all persons on the agency mailing list and make a reasonable effort to notify other persons who submitted written comments on the modification application, that:

(i) The permittee is authorized temporarily to conduct the activities described in the modification application; and

(ii) Unless the director approves or disapproves the application by the end of the authorization period, the permittee will be automatically authorized to conduct such activities for the life of the permit.

(B) If the permittee fails to send a notice to all persons on the agency mailing list by the date specified in paragraph (D)(2)(f)(iv)(a) of this rule, the effective date of the final automatic authorization will be deferred until fifty days after the permittee sends a notice to all persons on the agency mailing list.

(v) If the director does not approve or disapprove a modification application before the end of the automatic or temporary authorization period or reclassify the "Class 2" modification application as a "Class 3" modification, the permittee is authorized to conduct the activities described in the modification application for the life of the permit unless modified later under this rule. The activities authorized under paragraph (D)(2) of this rule as described in the modification application and shall be conducted in compliance with all applicable standards of Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code.

[Comment: The director is required to approve or disapprove an application for a "Class 2" modification within three hundred days after receipt of the modification. The three hundred day time period includes the automatic or temporary authorization periods provided in paragraphs (D)(2)(f)(i)(d), (D)(2)(f)(ii)(d), (D)(2)(f)(iii), and (F)(4) of this rule. As described in paragraph (D)(2)(f)(v) of this rule, the permittee will be automatically authorized to conduct the activity described in the "Class 2" modification application if the director does not approve or disapprove the application within three hundred days.]



(vi) In deciding to approve or disapprove a modification application, or to issue a temporary authorization, or to reclassify a "Class 2" modification as a "Class 3" modification, the director shall consider all comments received during the public comment period regarding the modification application, written materials submitted at the public meeting regarding the application, and any other documents regarding the director's decision, and shall respond in writing to all significant comments. The approval or disapproval by the director of a "Class 2" modification is a final action that is appealable under Chapter 3745. of the Revised Code. The administrative record for appeal of a "Class 2" modification shall include the comments, materials, and documents described in this paragraph.

(vii) If the director approves the application for the "Class 2" modification, the director shall issue the modified permit upon such terms and conditions as the director finds are reasonable to ensure that the operation, maintenance, closure, and post-closure care of the hazardous waste facility are conducted in accordance with Chapter 3734. of the Revised Code, the hazardous waste rules, and such additional terms and conditions as the director determines are necessary to protect human health and the environment.

(g) The director may disapprove or change the terms of a "Class 2" modification application, under paragraph (D)(2)(f)(i), (D)(2)(f)(ii), or (D)(2)(f)(iii) of this rule, if:

(i) The modification application is incomplete; or

(ii) The requested modification does not comply with the applicable requirements of Chapters 3745-54 to 3745-57 and 3745-205 of the Administrative Code or other applicable requirements in the hazardous waste rules; or

(iii) The conditions of the requested modification are inadequate to protect human health and the environment.

(h) The permittee may perform any construction associated with a "Class 2" modification application beginning sixty days after the submittal of the application to the director unless the director establishes a later date for commencing construction and notifies the permittee in writing prior to the



sixtieth day after the submittal of the application.

(3) "Class 3" modifications.

(a) "Class 3" modification applications shall be approved or disapproved by the director. Paragraphs (D)(3)(c) to (D)(3)(g) of this rule provide the procedures governing all "Class 3" modification applications. In addition to the procedures provided in paragraphs (D)(3)(c) to (D)(3)(g) of this rule, "Class 3" modifications are subject to the following additional procedures:

(i) Requests for "Class 3" modifications that do not meet the criteria of paragraph (D)(3)(b) of this rule shall be approved or disapproved in accordance with paragraph (D)(4) of this rule; and

(ii) Requests for "Class 3" modifications that do meet the criteria of paragraph (D)(3)(b) of this rule shall be approved or disapproved in accordance with paragraph (D)(5) of this rule.

(b) The director will use the procedures in paragraph (D)(5) of this rule for any of the following categories of "Class 3" modifications:

(i) Authority to conduct treatment, storage, or disposal at a site, location, or tract of land that is not authorized for the proposed category of treatment, storage, or disposal activity by the facility's permit;

(ii) Modification or addition of a "hazardous waste management unit," as defined in rule 3745-50-10 of the Administrative Code, that results in an increase in a facility's storage capacity of more than twenty-five per cent over the capacity authorized by the facility's permit, an increase in a facility's treatment rate of more than twenty-five per cent over the rate authorized by the permit, or an increase in a facility's disposal capacity over the capacity authorized by the permit. The authorized disposal capacity for a facility shall be calculated from the approved design plans for the disposal units at that facility. During a five year period, a facility's storage capacity or treatment rate shall not be modified to increase by more than twenty-five per cent in the aggregate without the director's approval pursuant to paragraph (D)(5) of this rule;

(iii) Authority to add any of the following categories of regulated activities not previously authorized



at a facility by the facility's permit: storage at a facility not previously authorized to store hazardous waste, treatment at a facility not previously authorized to treat hazardous waste, or disposal at a facility not previously authorized to dispose of hazardous waste;

(iv) Authority to add a category of hazardous waste management unit not previously authorized at the facility by the facility's permit;

(v) Authority to treat, store, or dispose of waste types listed or characterized as reactive wastes or explosive wastes in rules 3745-51-20 to 3745-51-24 or 3745-51-30 to 3745-51-35 of the Administrative Code, or any acute hazardous waste listed in paragraph (E) of rule 3745-51-33 of the Administrative Code at a facility not previously authorized to treat, store, or dispose of those types of wastes by the facility's permit, unless the requested authority is limited to wastes that no longer exhibit characteristics that meet the criteria for listing or for characterization as reactive wastes or explosive wastes, or for listing as acute hazardous waste, but still are required to carry those waste codes because of the requirements established in rule 3745-51-03 of the Administrative Code (e.g., the "mixture," "contained in," or "derived-from" provisions).

(c) The permittee shall submit a modification application to the director that:

(i) Describes the exact changes to be made to the facility that would require the permit to be modified and the proposed changes to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies the modification as a "Class 3" modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by rules 3745-50-43, 3745-50-44, and 3745-50-62 of the Administrative Code.

(d) The permittee shall send a notice of the modification application to all persons on the agency mailing list maintained by the director, the board of county commissioners of the county, the board of township trustees of the township, and the city manager or mayor of the municipal corporation in



which a hazardous waste facility is located, and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within seven days before or after the date of submittal of the modification application to the director, and the permittee shall provide to the director evidence of the mailing and publication. The notice shall include:

(i) Announcement of a sixty-day comment period, and the name and address of an Ohio EPA contact person to whom comments shall be sent;

(ii) Announcement of the date, time, and place for a public meeting on the modification application, to be held in accordance with paragraph (D)(3)(f) of this rule;

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

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

(v) Location where a copy of the modification application 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 that is being modified is available from the Ohio EPA contact person."

(e) The permittee shall place a copy of the permit modification application and supporting documents in a location accessible to the public in the vicinity of the facility.

(f) The permittee shall hold a public meeting no earlier than fifteen days after the publication of the notice required by paragraph (D)(3)(d) of this rule and no later than fifteen days before the close of the sixty-day comment period. The meeting shall be held, to the extent practicable, in the vicinity of the facility.

(g) The public shall be provided at least sixty days to comment on the modification application. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments shall be submitted to the Ohio EPA contact person identified in the notice.



(4) "Class 3" modifications that do not meet the criteria of paragraph (D)(3)(b) of this rule.

(a) After the conclusion of the sixty-day comment period described in paragraph (D)(3)(g) of this rule and the completion of the review of the "Class 3" modification application, the director shall:

(i) Issue a draft modified permit or a notice of intent to deny the modification application; and

(ii) Respond in writing to all written comments that pertain to the subject matter of the permit modification application received during the sixty-day comment period provided in paragraph (D)(3)(g) of this rule, place a copy of the response at the location where a copy of the application and the draft modified permit or notice of intent to deny the modification application are available for inspection, and mail a copy of the response to each of the persons who submitted written comments during that comment period; and

(iii) Give public notice of the issuance of the draft modified permit or notice of intent to deny the modification application in a newspaper having general circulation in the county in which the facility is located and over a local radio station. The notice shall contain a summary of the modification application and the draft modified permit or notice of intent to deny the modification application, the location of the facility, a description of the proposed modification, the location where a copy of the application and the draft modified permit or notice of intent to deny the modification application are available for inspection, and the statement that any person may submit written comments relevant to the permit modification request and draft modified permit or notice of intent to deny the modification application, or may request a public meeting thereon within forty-five days after the public notice. The public shall be provided at least forty-five days to comment on the modification application. The comment period shall begin on the date the notice is published in the newspaper. Comments shall be submitted to the Ohio EPA contact person identified in the notice; and

(iv) If significant interest is shown in a public meeting, the director shall promptly fix and give public notice in a newspaper having general circulation in the county in which the facility is located and over a local radio station, of a date for a public meeting which shall be held in the county in which the facility is located, not fewer than thirty days after public notice of the public meeting. At the public meeting, any person may submit written or oral comments relevant to the modification application and draft modified permit or notice of intent to deny the modification application; and



(v) If the director approves the application for the "Class 3" modification, the modified permit shall be issued upon such terms and conditions as the director finds are reasonable to ensure that the operation, maintenance, closure, and post-closure care of the hazardous waste facility are conducted in accordance with Chapter 3734. of the Revised Code, the hazardous waste rules, and such additional terms and conditions as the director determines are necessary to protect human health and the environment.

(b) The director shall approve or disapprove an application for a "Class 3" modification within three hundred sixty-five days after receipt of the modification application. In deciding to approve or disapprove such a "Class 3" modification application, the director shall consider all comments received during the public comment periods required in paragraphs (D)(3)(g) and (D)(4)(a) of this rule regarding the modification application, written materials submitted at the public meetings regarding the application, and any other documents regarding the director's decision, and shall respond in writing to all significant comments. The approval or disapproval by the director of a "Class 3" modification application is a final action that is appealable under Chapter 3745. of the Revised Code. The administrative record for appeal of a "Class 3" modification shall include the comments, materials, and documents described in this paragraph.

(5) "Class 3" modifications that do meet the criteria of paragraph (D)(3)(b) of this rule.

(a) After the conclusion of the sixty-day comment period described in paragraph (D)(3)(g) of this rule, the director shall consider the "Class 3" modification application to determine whether the application meets the requirements of paragraph (A) of rule 3745-50-38 of the Administrative Code.

(b) Upon completion of the review pursuant to paragraph (D)(5)(a) of this rule, the director will approve or disapprove the "Class 3" modification application in accordance with the procedures in paragraph (D)(4) of this rule.

(E) Other modifications.

(1) In the case of modifications not explicitly listed in the appendix to this rule, the permittee may:



(a) Request a determination by the director that the proposed modification be reviewed and processed in accordance with the "Class 1" or "Class 2" modification procedures identified in this rule. To make such a request, the permittee shall submit a modification classification request which contains the information necessary to support the request. A modification classification request is not a modification application; or

(b) Submit a "Class 1" or "Class 2" modification application to the director. No later than thirty days after receipt of the modification application, the director will evaluate the classification of this modification using the criteria in paragraph (E)(2) of this rule and will notify the permittee of Ohio EPA's determination on the proper classification of the modification; or

(c) Submit a "Class 3" modification application to the director.

(2) The director shall make the classification determination described in paragraph (E)(1)(a) of this rule not later than thirty days after receipt of the request and shall notify the permittee of the classification. In making a classification determination, the director shall consider the similarity of the modification to other modifications in the appendix to this rule and all of the following criteria:

(a) "Class 1" modifications apply to minor changes to the facility or the facility's operations. These changes do not necessitate substantial alteration of the permit conditions and do not reduce the capacity of the facility to protect human health or the environment. In the case of "Class 1" modifications, the director's prior approval may be required.

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

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

(ii) Technological advancements; or

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



(c) "Class 3" modifications apply to changes that substantially alter the facility or the facility's operations.

(3) After the director has notified the permittee of the classification determination pursuant to paragraph (E)(2) of this rule, the permittee shall initiate the appropriate modification procedures in paragraph (D)(1), (D)(2), or (D)(3) of this rule.

(F) 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 paragraph (F) of this rule, to conduct the activity described in a temporary authorization request. A temporary authorization shall have a term of not more than one hundred eighty days.

(2)

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

(i) Any "Class 2" modification that meets the criteria in paragraph (F)(3)(b) of this rule; and

(ii) Any "Class 3" modification that meets the criteria in paragraph (F)(3)(b)(i) or (F)(3)(b)(ii) of this rule, or that meets the criteria in paragraphs (F)(3)(b)(iii) to (F)(3)(b)(v) of this rule and provides improved management or treatment of a hazardous waste already included in the facility permit.

(b) The temporary authorization request shall include:

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

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

(iii) Sufficient information to ensure compliance with the applicable requirements of Chapters 3745-54 to 3745-57, and 3745-205 of the Administrative Code.



(c) The permittee shall send a notice about the temporary authorization request to all persons on the agency mailing list maintained by the director, the board of county commissioners of the county, the board of township trustees of the township, and the city manager or mayor of the municipal corporation in which a hazardous waste facility is located. This notification shall be made within seven days after submittal of the authorization request.

(3) The director shall grant or deny the temporary authorization request as quickly as practical. In deciding to grant a temporary authorization, the director shall find that:

(a) The authorized activities will be conducted in compliance with the standards of Chapters 3745-54 to 3745-57, 3745-205, and 3745-266 of the Administrative Code.

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

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

(ii) To allow treatment or storage in tanks or containers, or in containment buildings, of land disposal restricted wastes in accordance with Chapter 3745-270 of the Administrative Code;

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

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

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

(4) A temporary authorization may be reissued for one additional term of up to one hundred eighty days provided that the permittee has requested a "Class 2" or "Class 3" modification for the activity authorized by the temporary authorization, and:

(a) The reissued temporary authorization constitutes the director's decision on a "Class 2" modification in accordance with paragraph (D)(2)(f)(i) or (D)(2)(f)(ii) of this rule; or



(b) The director determines that the reissued temporary authorization of a "Class 3" modification request is warranted to allow the authorized activities to continue while the modification procedures of paragraph (D)(3) of this rule are conducted.

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

(1) The director shall send a notice to all persons on the agency mailing list, the board of county commissioners of the county, the board of township trustees of the township, and the city manager or mayor of the municipal corporation in which a hazardous waste facility is located, within ten days after any decision under this rule to approve or disapprove a "Class 2" or "Class 3" modification application. The director also shall send a notice to such persons within ten days after an automatic or temporary authorization for a "Class 2" modification goes into effect under paragraph (D)(2)(f)(iii), (D)(2)(f)(v), (F)(3), or (F)(4) of this rule, or a temporary authorization for a "Class 3" modification goes into effect under paragraph (F)(3) or (F)(4) of this rule.

(2) An automatic authorization that takes effect under paragraph (D)(2)(f)(iii) or (D)(2)(f)(v) of this rule may be appealed pursuant to Chapter 3745. of the Revised Code; however, the permittee may continue to conduct the activities pursuant to the automatic authorization unless and until a final determination is made by the "Environmental Review Appeals Commission" to grant review and remand the permit decision.

(H) Permit by rule for newly regulated wastes or hazardous waste management units.

(1) The permittee who is treating, storing, or disposing of hazardous waste on the effective date of statutory or regulatory changes under Chapter 3734. of the Revised Code that render the permittee subject to additional hazardous waste permitting requirements for newly regulated hazardous waste or hazardous waste management units will be deemed to have a permit by rule for such newly regulated waste or units if:

(a) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the Ohio statutory or regulatory change that lists or identifies the waste, or that regulates the unit;



(b) The permittee submits a "Class 1" modification application no later than thirty days after the date on which the waste or unit becomes subject to the new requirements;

(c) The permittee is in compliance with the applicable standards of Chapters 3745-65 to 3745-69 and 3745-256, of the Administrative Code;

(d) The permittee also submits a complete "Class 2" or "Class 3" modification application no later than one hundred eighty days after the director requests the modification application or upon a later date if the permittee demonstrates to the director good cause for the late submittal; and

(e) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable requirements of Chapters 3745-65 to 3745-69 and 3745-256 of the Administrative Code for ground water monitoring and financial responsibility on the date three hundred sixty-five days after the effective date of the Ohio statutory or regulatory change that lists or identifies the waste as hazardous, or that regulates the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, the permittee will not have authority to operate under paragraph (H) of this rule.

(2) The director shall approve or disapprove the "Class 2" or "Class 3" modification application submitted pursuant to paragraph (H)(1)(d) of this rule in accordance with paragraphs (D)(2)(f)(vii) and (D)(2)(g) of this rule or with paragraphs (D)(4)(a) and (D)(4)(b) of this rule. If a "Class 3" modification application submitted pursuant to paragraph (H)(1)(d) of this rule is from a permit by rule facility conducting thermal treatment of hazardous waste in a boiler or industrial furnace, the director shall approve or disapprove the application in accordance with paragraph (D)(5) of this rule and division (D)(2) of section 3734.05 of the Revised Code, except that the director shall not disapprove an application for the thermal treatment on the basis of the criteria in division (D)(2)(g) or (D)(2)(h) of section 3734.05 of the Revised Code.

(3) New wastes or units added to a facility's permit under paragraph (H) of this rule do not constitute expansions for the purpose of the twenty-five per cent capacity expansion limit for "Class 2" or "Class 3" modifications.



(I) Hazardous waste military munitions treatment and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions that bar the permittee from accepting off-site wastes, if:

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

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

(3) The permittee submits a complete "Class 2" modification request within one hundred eighty days after the date when the waste military munitions became subject to hazardous waste regulatory requirements.

(J) The director may initiate a permit modification of a hazardous waste facility installation and operation permit by:

(1) Issuing a draft modified permit;and

(2) Giving public notice of the issuance of the draft permit modification, at a minimum, in a newspaper having general circulation in the county in which the facility is located and over a local radio station. The notice shall contain, at a minimum, a summary of the draft permit modification, the location of the facility, a description of the facility, the location where copies of the draft modified permit are available for inspection, and the statement that any person may submit written comments relevant to the draft permit modification or may request a public meeting thereon within forty-five days after the issuance of the public notice; and

(3) If significant interest is shown in a public meeting, promptly fixing and giving public notice, at a minimum, in a newspaper having general circulation in the county in which the facility is located and over a local radio station, of a date for a public meeting which shall be held in the county in which the facility is located, not fewer than thirty days after public notice of the public meeting. At the



public meeting, any person may submit written or oral comments relevant to the proposed modified permit; and

(4) Within sixty days after the public meeting or close of the public comment period, by issuing the modified permit upon such terms and conditions as the director finds are reasonable to ensure that the operation, maintenance, closure, and post-closure care of the hazardous waste facility are conducted in accordance with Chapter 3734. of the Revised Code, the hazardous waste rules, and such additional terms and conditions as the director determines are necessary to protect human health and the environment. In approving such a modification, the director shall consider all comments received during the public comment period required in paragraph (J)(2) of this rule regarding the modification, written materials submitted at the public meeting regarding the modification, and any other documents regarding the director's decision, and shall respond in writing to all significant comments. The approval by the director of the modification is a final action that is appealable under Chapter 3745. of the Revised Code. The administrative record for appeal of the modification shall include the comments, materials, and documents described in this paragraph.

(K) Permit modification list. The director shall maintain a list of all approved permit modifications and shall publish a notice once a year in a newspaper having general circulation throughout the state of Ohio that an updated list is available for review.

(L) Combustion facility changes to meet 40 CFR Part 63 maximum achievable control technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under the appendix to this rule.

(1) Facility owners or operators shall be in compliance with the "Notification of Intent to Comply (NIC)" requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000, (see 40 CFR 63.1200 to 40 CFR 63.1499 revised as of July 1, 2000) in order to request a permit modification under this rule for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 40 CFR 63.1204, and 40 CFR 63.1205.

(2) Facility owners or operators shall comply with the NIC requirements of 40 CFR 63.1210(b) and 40 CFR 63.1212(a) before a permit modification may be requested under this rule for the purpose of technology changes needed to meet the standards in 40 CFR 63.1215, 40 CFR 63.1216, 40 CFR



63.1217, 40 CFR 63.1218, 40 CFR 63.1219, 40 CFR 63.1220, and 40 CFR 63.1221.

(3) If the director does not approve or deny the request within ninety days after the director receives it, the request will be deemed approved. The director may, at his discretion, extend this ninety-day deadline one time for up to thirty days by notifying the facility owner or operator.

(M) Waiver of hazardous waste permit conditions in support of transition to the 40 CFR Part 63 MACT standards.

(1) The owner or operator may request to have specific hazardous waste operating and emission limits waived by submitting a "Class 1" permit modification request under the appendix to this rule. The owner or operator shall:

(a) Identify the specific hazardous waste permit operating and emission limits which is the subject of the waiver request; and

(b) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the hazardous waste permit and MACT compliance; and

(c) Discuss how the revised provisions will be sufficiently protective; and

(d) The director will approve or deny the request within thirty days after receipt of the request. The director may, at his discretion, extend this thirty-day deadline one time for up to thirty days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as described in 40 CFR 63.1207(h)(2)(i) and 40 CFR 63.1207(h)(2)(ii), for an aggregate time not to exceed seven hundred twenty hours of operation (renewable at the discretion of the director) the owner or operator shall:

(a) Submit the modification request to the director at the same time the test plans are submitted to the director; and



(b) The director may elect to approve or deny the request contingent upon approval of the test plans.

(N) [Reserved.]

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]