**Section 703.280 Permit Modification at the Request of the Permittee**

a) Class 1 Modifications. See Section 703.281.

b) Class 2 Modifications. See Section 703.282.

c) Class 3 Modifications. See Section 703.283.

d) Other Modificattions

1) In the case of modifications not explicitly listed in Appendix A, the permittee may submit a Class 3 modification request to the Agency, or the permittee may request a determination by the Agency that the modification 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, the permittee must provide the Agency with the necessary information to support the requested classification.

2) The Agency must make the determination described in subsection (d)(1) as promptly as practicable. In determining the appropriate class for a specific modification, the Agency must consider the similarity of the modification to other modifications codified in Appendix A and the following criteria:

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

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

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

ii) Technological advances; and

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

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

e) Temporary Authorizations

1) Upon request of the permittee, the Agency must, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection (e). Temporary authorizations have a term of not more than 180 days.

2) Procedures

A) The permittee may request a temporary authorization for the following:

i) Any Class 2 modification meeting the criteria in subsection (e)(3)(B); and

ii) Any Class 3 modification that meets the criteria in subsection (e)(3)(B)(i) or that meets the criteria in subsections (e)(3)(B)(iii) through (e)(3)(B)(v) and provides improved management or treatment of a hazardous waste already listed in the facility permit.

B) The temporary authorization request must include the following:

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 35 Ill. Adm. Code 724 standards.

C) The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Agency and to appropriate units of State and local governments, as specified in 35 Ill. Adm. Code 705.163(a)(5). This notification must be made within seven days after submission of the authorization request.

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

A) That the authorized activities are in compliance with the standards of 35 Ill. Adm. Code 724.

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

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

ii) To allow treatment or storage in tanks, containers, or containment buildings, in accordance with 35 Ill. Adm. Code 728;

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 adequately protect human health and the environment.

4) A temporary authorization must 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 either of the following is true:

A) The reissued temporary authorization constitutes the Agency's decision on a Class 2 permit modification in accordance with Section 703.282(f)(1)(D) or (f)(2)(D); or

B) The Agency 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 35 Ill. Adm. Code 703.283 are conducted.

f) Public Notice and Appeals of Permit Modification Decisions

1) The Agency must notify persons on the facility mailing list and appropriate units of State and local government within 10 days after any decision to grant or deny a Class 2 or 3 permit modification request. The Agency must also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect pursuant to Section 703.282(f)(3) or (f)(5).

2) The Agency's decision to grant or deny a Class 2 or 3 permit modification request may be appealed under the permit appeal procedures of 35 Ill. Adm. Code 705.212.

3) An automatic authorization that goes into effect pursuant to Section 703.282(f)(3) or (f)(5) may be appealed under the permit appeal procedures of 35 Ill. Adm. Code 705.212; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the Board enters a final order on the appeal notwithstanding the provisions of 35 Ill. Adm. Code 705.204.

g) Newly Regulated Wastes and Units

1) The permittee is authorized to continue to manage wastes listed or identified as hazardous pursuant to 35 Ill. Adm. Code 721, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if each of the following is true:

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 final rule listing or identifying the waste, or regulating the unit;

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

C) The permittee is in compliance with the applicable standards of 35 Ill. Adm. Code 725 and 726;

D) The permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the rule listing or identifying the waste, or subjecting the unit to management standards pursuant to 35 Ill. Adm. Code 724, 725, or 726; and

E) In the case of land disposal units, the permittee certifies that such unit is in compliance with all applicable requirements of 35 Ill. Adm. Code 725 for groundwater monitoring and financial responsibility requirements on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, the owner or operator loses authority to operate pursuant to this Section.

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

h) Military Hazardous Waste Munitions Treatment and Disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if each of the following is true:

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;

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 restricting the receipt of off-site waste munitions; and

3) The permittee submits a complete Class 2 modification request within 180 days after the date when the waste military munitions became subject to hazardous waste regulatory requirements.

i) Permit Modification List. The Agency 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.

j) Combustion Facility Changes to Meet 40 CFR 63 MACT Standards. The following procedures apply to hazardous waste combustion facility permit modifications requested pursuant to Appendix A, paragraph L(9).

1) A facility owner or operator must have complied with the federal notification of intent to comply (NIC) requirements of 40 CFR 63.1210 that was in effect prior to October 11, 2000, (see subpart EEE of 40 CFR 63 (2000), incorporated by reference in 35 Ill. Adm. Code 720.111(b)) in order to request a permit modification pursuant to this Section for the purpose of technology changes needed to meet the standards of 40 CFR 63.1203, 63.1204, and 63.1205, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

2) If the Agency does not act to either approve or deny the request within 90 days of receiving it, the request must be deemed approved. The Agency may, at its discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator in writing before the 90 days has expired. A facility owner or operator must comply with the NIC requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under this Section for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards as added on October 12, 2005, incorporated by reference in 35 Ill. Adm. Code 720.111(b).

k) Waiver of RCRA Permit Conditions in Support of Transition to the 40 CFR 63 MACT Standards

1) The facility owner or operator may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under Appendix A, paragraph L.10. The owner or operator must provide the information described in subsections (k)(1)(A) though (k)(1)(C), with Agency review subject to the conditions of subsection (k)(1)(D):

A) It must identify the specific RCRA permit operating and emissions limits that the owner or operator is requesting to waive;

B) It must provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the RCRA permit and MACT compliance; and

C) It must discuss how the revised provisions will be sufficiently protective.

D) The Agency must approve or deny the request within 30 days after receipt of the request. The Agency may, at its discretion, extend this 30-day deadline one time for up to 30 days by notifying the facility owner or operator in writing.

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 defined under 40 CFR 63.1207(h)(2)(i) and (h)(2)(ii), incorporated by reference in 35 Ill. Adm. Code 720.111(b), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Agency) the owner or operator must fulfill the conditions of subsection (k)(2)(A), subject to the conditions of subsection (k)(2)(B):

A) It must submit its modification request to the Agency at the same time it submits its test plans to the Agency.

B) The Agency may elect to approve or deny the request contingent upon approval of the test plans.

l) This subsection (l) corresponds with 40 CFR 270.42(1), which USEPA removed and marked reserved at 81 Fed. Reg. 85732 (November 28, 2016). This statement maintains structural consistency with the corresponding federal requirements.

BOARD NOTE: Derived from 40 CFR 270.42(d) through (k) (2017).

(Source: Amended at 42 Ill. Reg. 20993, effective November 19, 2018)