

# Options on Class 2 Permit Modification Requests

- Approve with or without changes [40 CFR 270.42 (b) (6) (ii) (A)] *(unilateral)*
- Deny [270.42 (b) (6) (ii) (B)]
- Convert to Class 3 [270.42 (b) (6) (ii) (C)]
- Approve as Temporary Authorization for up to 180 days [270.42 (b) (6) (ii) (D)]
- With written consent of Permittee, extend period to make decision [270.42 (b) (6) (vii)] *why didnt we do this*
- If Agency does not take any of the above actions, Permittee has authorization to implement modification for up to 180 days [270.42 (b) (6) (iii)]



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# Technical Issues Can Be Resolved in a Class 2 Proceeding

- Regulations do not prohibit resolving technical issues in a Class 2 proceeding
- 270.42 (b)(6)(i)(A) and (ii)(A) “Approve the request, with or without changes”

# Resolution of Issues Contemplated in Class 2 Process

- The Preamble to EPA Final Rule, “*Permit Modifications for Hazardous Waste Management Facilities.*” 53 Fed. Reg. 37912 (September 28, 1988) (“Preamble”), at Section IV.B.2.i, regarding the Class 2 process states: **“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.”**

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# Extension of Time in Class 2 Proceeding

- 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 [270.42 (b)(6)(vii)]
- Preamble Section IV.B.2.ii, states: “This option [additional time for Class 2] may be useful where the Director requests additional information from the permittee or when the permittee wishes to conduct additional public meetings.”

*Why didn't we do this*

# Approval “With or Without Changes”

- Applicable regulations for Class 2 modification requests unequivocally authorize the NMED to issue modifications “with or without changes”
- 270.42 (b)(6)(i)(A)
- 270.42 (b)(6)(ii)(A)

# Agency Can Make Changes to a Class 2 Request Even if Not Proposed by Commenters

- 40 CFR 270.42 (b)(6)(i) (A) and (ii)(A) do not provide that Class 2 permit modifications may only be modified if change language is submitted by commenters

# Complexity Is Not a Basis to Require Submittal as a Class 3

- If a modification is identified as a Class 2 in Appendix I to 270.42, it must be submitted as a Class 2
  - 270.42 (b)(1) [request for class 2 modifications listed in Appendix I]
  - If modification not listed in Appendix I, permittee submits either as a Class 3 or a request to classify (270.42 (b) (6) (i) (C))
  - Complexity is a basis for the agency to convert a Class 2 to a Class 3 after the public comment period (270.42 (b)(6)(i)(C) and (ii)(C))