Options on Class 2 Permit Modification Requests

- **Approve with or without changes** [40 CFR 270.42 (b) (6) (ii) (A)]
- **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)]
- **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)]
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."
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.”
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))