

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§305.50, 305.172, and 305.572, and new §305.150, concerning consolidated permits.

The primary purpose of the proposed amendments and the proposed new section is to ensure that Texas' state rules are equivalent to the federal regulations after which they are patterned, either by incorporating the federal regulations into the state rules by reference or by introducing language into the state rules that is intended to be equivalent to the corresponding federal regulations. The proposed rules also include typographical and administrative revisions designed to clarify certain rule language, to correct references to the Code of Federal Regulations, and to clarify the number of copies of certain permit applications that must be submitted.

The proposed language for Chapter 305 specifically addresses changes to the federal hazardous waste regulations that became effective between July 1, 1993, and June 30, 1994, under the authority of the federal Resource Conservation and Recovery Act (RCRA). By establishing equivalency with these federal regulations, the State of Texas will maintain equivalency with the federal hazardous waste program, thus enabling the state to retain authorization to operate aspects of the federal program in lieu of the United States Environmental Protection Agency. The resultant benefit will be a reduced cost to participants in the hazardous waste regulatory program because state hazardous waste requirements will not be duplicated by the requirements of the federal hazardous waste program.

The proposed amendment to §305.50(1) is designed to clarify the number of copies that must be submitted with an application for a permit to store, process, or dispose of solid waste. Other proposed

amendments to §305.50 incorporate administrative revisions to the rule language designed to correct grammatical errors, references to the Code of Federal Regulations , cross-references to other state rules, and references to certain state agencies.

Proposed new §305.150, relating to Incorporation of References, incorporates 40 Code of Federal Regulations (CFR) §260.11 by reference and makes it applicable for use throughout Chapter 305.

The proposed amendments to §305.172(2)(A)(iii) and (iv) update references to EPA Publication SW-846, which relates to standardized sampling and testing methods. Other proposed amendments throughout §305.172 incorporate administrative revisions to correct references to the Code of Federal Regulations.

The proposed amendments to §305.572 incorporate by reference certain changes in 40 CFR Part 270 through August 31, 1993. These changes are intended to update references to EPA Publication SW-846.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections.

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be

simplification of existing regulations, enhanced consistency between federal and state waste regulatory requirements, more cost-effective regulation of waste management activities, and improvements in the management of hazardous waste and hazardous waste facilities. The proposed amendments generally incorporate existing federal regulations and certain procedural and administrative provisions and correct typographical and wording errors. There are no economic costs anticipated to any person, including any small business, required to comply with the sections as proposed.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the proposed rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The proposed rules are also intended to clarify the number of copies to be submitted with certain permit applications and to make administrative corrections to certain language within the rules. The proposed rules will substantially advance this stated purpose by adopting the aforementioned federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations. The proposed rules will also specify the number of copies to be submitted with certain permit applications and will make administrative corrections within the rules. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations, and the subject regulations do not affect a landowners rights in private real property. Also, the following exception to

the application of Texas Government Code Chapter 2007 applies to these rules: Section 2007.003(b)(4)--an action that is reasonably taken to fulfill an obligation mandated by federal law.

Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received within 30 days following the date of this publication and should reference Rule Log No. 96115-335-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Jace Houston at (512) 239-4641, or Ray Henry Austin at (512) 239-6814.

The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

These proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

Subchapter C : Application for Permit

The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments implement Texas Health and Safety Code Chapter 361.

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit.

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) One original and three copies [Six copies] of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) - (3) (No change.)

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) - (E) (No change.)

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency, that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced [had] displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) (No change.)

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR [Code of Federal Regulations] §§270.14 - 270.26.

Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) - (9) (No change.)

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) - (D) (No change.)

(E) the information and demonstrations concerning faults described under paragraph (4)(F)(D) of this section.

(11) (No change.)

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) - (B) (No change.)

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR [Code of Federal Regulations] §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) - (VIII) (No change.)

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Natural Resource Conservation Commission [TWC], Texas Parks and Wildlife, General Land Office, [Texas Air Control Board,] Texas Department of Health, and Texas Railroad Commission);

(X) - (XI) (No change.)

(ii) (No change.)

(D) - (F) (No change.)

(13) - (14) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

**Subchapter G : Additional Conditions for Solid
Waste Storage, Processing, or Disposal Permits**

The new section is proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed new language implements Texas Health and Safety Code Chapter 361.

§305.150. Incorporation of References.

When used in this chapter (relating to Consolidated Permits), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

Subchapter I : Hazardous Waste Incinerator Permits

The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments implement Texas Health and Safety Code Chapter 361.

§305.172. Determining Feasibility of Compliance and Adequate Operating Conditions.

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 CFR [Code of Federal Regulations] §264.345, the commission shall establish conditions in the permit for a new hazardous waste incinerator, to be effective during the trial burn.

(1) (No change.)

(2) The trial burn plan shall include the following information:

(A) an analysis of each waste or mixture of wastes to be burned which includes:

(i) - (ii) (No change.)

(iii) an identification of any hazardous organic constituents listed in 40 CFR [Code of Federal Regulations] Part 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, which reasonably would not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for their exclusion established. The waste analysis must rely on analytical techniques specified in “Test Methods for Evaluating [the Evaluation of] Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent; and

(iv) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in “Test Methods for Evaluating [the Evaluation of] Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent;

(B) - (H) (No change.)

(3) (No change.)

(4) Based on the waste analysis data in the trial burn plan, the commission shall specify as trial principal organic hazardous constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the commission based on an estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and for wastes listed in 40 CFR [Code of Federal Regulations] Part 261, Subpart D, the hazardous waste organic constituent or constituents identified in Appendix VII of that part as the basis for listing.

(5) The commission shall approve a trial burn plan if it finds that:

(A) the trial burn is likely to determine whether the incinerator performance standard required by 40 CFR [Code of Federal Regulations] §264.343 can be met;

(B) (No change.)

(C) the trial burn will help the commission to determine the operating requirements to be specified (in the permit) according to 40 CFR [Code of Federal Regulations] §264.345; and

(D) (No change.)

(6) During each approved trial burn (or as soon after the burn as practicable), the applicant must make the following determinations:

(A) - (C) (No change.)

(D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR [Code of Federal Regulations] §264.343(a);

(E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with 40 CFR [Code of Federal Regulations] §264.343(b);

(F) a computation of particulate emissions, in accordance with 40 CFR [Code of Federal Regulations] §264.343(c);

(G) - (I) (No change.)

(J) such other information as the executive director may specify as necessary to ensure that the trial burn will determine the compliance with the performance standards in 40 CFR [Code of Federal Regulations] §264.343 and to establish the operating conditions required by 40 CFR [Code of Federal Regulations] §264.345 as necessary to meet those performance standards.

(7) - (9) (No change.)

(10) Based on the results of the trial burn, the commission shall set the operating requirements in the final permit according to 40 CFR [Code of Federal Regulations] §264.345. The permit amendment or modification shall proceed according to §305.62 of this title (relating to Amendment) or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

Subchapter Q : Permits for Boilers and Industrial Furnaces

Burning Hazardous Waste

The amendments are proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments implement Texas Health and Safety Code Chapter 361.

§305.572. Permit and Trial Burn Requirements.

The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through June 1, 1990 (see 55 FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, [and] September 5, 1991, and August 31, 1993, issues of the Federal Register (see 56 FedReg 7239, 32688, 42504, and 43874, and 58 FedReg 46040):

(1) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 29, 1996.