

The commission proposes new §50.45, concerning nonsubstantive corrections to permits. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Program specific requirements governing corrections and endorsements in Chapters 291, 295, 297, and 305 are being repealed concurrently with this rulemaking. This rulemaking does not apply to air quality permits under 30 TAC Chapter 122, concerning Federal Operating Permits.

EXPLANATION OF PROPOSED RULE

The proposed new section applies to a permit as defined in 30 TAC §3.2, concerning Definitions, except that it does not apply to air quality permits under Chapter 122, concerning Federal Operating Permits. The section allows the executive director, on his own motion or at the request of the permittee, to make a nonsubstantive correction to a permit without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records. The section also provides the conditions under which the executive director can issue the nonsubstantive permit corrections, such as corrections of typographical errors and corrections that provide more accurate information. Finally, the section provides for the coordination of any proposed corrections made under the section with the general counsel. A correction may only be made if the general counsel agrees in writing that the proposed correction is consistent with the requirements of the section. The general counsel is required to act within five business days of receiving the executive director's proposal. If the general counsel does not approve the correction, or fails to act, the executive director is authorized to set the matter for commission during a commission meeting.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section.

Promulgation of the rule will not burden private real property which is the subject of the rule because it concerns only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

PUBLIC HEARING

A public hearing on this proposal will be held February 5, 1997, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96174-050-AD. Comments must be received by 5:00 p.m., February 5, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed new section implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER C : ACTION BY EXECUTIVE DIRECTOR

§50.45

§50.45. Corrections to Permits

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits). The executive director, on his own motion or at the request of the permittee, may make a nonsubstantive correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue nonsubstantive permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided

by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

(4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;

(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;

(6) to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(7) to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(8) to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(9) to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(10) to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction. The executive director may make a correction only if the general counsel agrees in writing that the proposed correction is consistent with the requirements of this section. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel does not approve or fails to act, the executive director may set the matter for commission action during a commission meeting.

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 December 18, 1996.

The commission proposes the repeal of §291.108, concerning nonsubstantive corrections to certificates of convenience and necessity. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

EXPLANATION OF PROPOSED RULE

The provisions of the repealed section will be replaced with a new §50.45, concerning Corrections to Permits, that is being proposed concurrently, and the repeal simply removes duplicative requirements.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is

to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section and repealing duplicative requirements. Promulgation of the rule will not burden private real property which is the subject of the rule because it concerns only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

PUBLIC HEARING

A public hearing on this proposal will be held February 5, 1997, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96174-050-AD. Comments must be received by

5:00 p.m., February 5, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER G : CERTIFICATES OF CONVENIENCE AND NECESSITY

§291.108

§291.108. Corrections to Certificates of Convenience and Necessity.

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 December 18, 1996.

The commission proposes an amendment to §295.158, concerning amendments to water rights. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

EXPLANATION OF PROPOSED RULE

The proposed amendment deletes subsection (c)(2)(A), which provides for the correction of nonsubstantive errors in a permit or certificate of adjudication, such as in the name of the water right holder, boundary description, or other details that were incorrectly transcribed. The amendment also deletes subsection (d), which provides for notice of the amendment to the water right holder, the executive director, the public interest advocate, and appropriate parties. The requirements of the deleted provisions are addressed in a new §50.45, concerning Corrections to Permits, which is being proposed concurrently, and the modification to §295.158 simply removes duplicative requirements.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced consistency in the

commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section and repealing duplicative requirements. Promulgation of the rule will not burden private real property which is the subject of the rule because it concerns only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

PUBLIC HEARING

A public hearing on this proposal will be held February 5, 1997, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will

be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96174-050-AD. Comments must be received by 5:00 p.m., February 5, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER C : NOTICE REQUIREMENTS FOR WATER USE PERMIT APPLICATIONS

§295.158

§295.158. Notice of Amendments to Water Rights.

(a) - (b) (No change.)

(c) Not requiring mailed and published notice.

(1) Only an application to amend an existing permit, certified filing, or certificate of adjudication which does not contemplate an additional consumptive use of state water or an increased rate or period of diversion and which, in the judgment of the commission, has no potential for harming any other existing water right, is subject to amendment by the commission without notice other than that provided to the record holder. Upon filing such an application, the commission shall consider whether additional notice is required based on the particular facts of the application.

(2) Applications of the following descriptions may not require additional notice:

[(A) to correct errors inadvertently made in the preparation of a permit or certificate of adjudication, such as in the name of the water right holder, boundary description, or other details incorrectly transcribed;]

(A) [(B)] to cure ambiguities or ineffective provisions in a water right;

(B) [(C)] to reduce an appropriation or rate of diversion;

(C) [(D)] to change the place of use when there will be no increased use of state water and the change will not operate to the injury of any other lawful user of state water. If a water right is owned by more than one party, all other parties will be notified of the proposed changes by certified mail and given two weeks to protest. If no protest is received, further notice will not be required;

(D) [(E)] to change the point of diversion when the existing rate of diversion will not be increased and there are no interjacent water users of record between the originally authorized point of diversion and the new one, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(E) [(F)] to add additional points of diversion where the existing rate of diversion will not be increased and there are no water users of record between any originally authorized point of diversion and the new one to be added, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the

proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(F) [(G)] to increase the rate or period for diversion from a storage reservoir.

[(d) Correction of water rights by the commission. Notice of the proposed amendment shall be given to the water right holder, the executive director the public interest advocate, and all parties to the previous proceeding on the water right to be corrected.]

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 December 18, 1996.

The commission proposes the repeal of §297.62, concerning nonsubstantive changes and corrections to water rights. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

EXPLANATION OF PROPOSED RULE

The provisions of the repealed section will be replaced with a new §50.45, concerning Corrections to Permits, that is being proposed concurrently, and the repeal simply removes duplicative requirements.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is

to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section and repealing duplicative requirements. Promulgation of the rule will not burden private real property which is the subject of the rule because they concern only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

PUBLIC HEARING

A public hearing on this proposal will be held February 5, 1997, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96174-050-AD. Comments must be received by

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Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

SUBCHAPTER F : AMENDMENTS TO WATER RIGHTS;

CORRECTIONS TO WATER RIGHTS

§297.62

§297.62. Corrections of Water Rights by the Commission.

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 December 18, 1996.

The commission proposes the repeal of §305.65, concerning nonsubstantive changes to permits. The purpose of this rulemaking is to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

EXPLANATION OF PROPOSED RULE

The provisions of the repealed section will be replaced with a new §50.45, concerning Corrections to Permits, that is being proposed concurrently, and the repeal simply removes duplicative requirements.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be enhanced consistency in the commission's procedural requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for the rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is

to continue the effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. The rule will substantially advance this specific purpose by placing certain agency requirements governing nonsubstantive permit corrections under a common section and repealing duplicative requirements. Promulgation of the rule will not burden private real property which is the subject of these rules because they concern only procedural rules. Also, the following exceptions to the application of the Texas Government Code, Chapter 2007 apply to the rule: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

PUBLIC HEARING

A public hearing on this proposal will be held February 5, 1997, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

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Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412.

**SUBCHAPTER D : AMENDMENTS, RENEWALS, TRANSFERS,
CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS**

§305.65

§305.65. Corrections of Permits.

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 December 18, 1996.