

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to Chapter 305, Consolidated Permits, Subchapter H, Additional Conditions for Injection Well Permits, §305.154, Standards and §305.157, Record Retention. The amendments are adopted *without changes* to the proposed text as published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6652) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts amendments to include a minor clerical change for *Texas Register* formatting requirements and to increase compatibility with federal regulations by reducing the record retention period.

#### SECTION BY SECTION DISCUSSION

The adopted §305.154(a)(7)(B), Standards, will delete the acronym “USDWs” because the phrase “underground sources of drinking water” is only used once in the section.

The adopted §305.157, Record Retention, will reduce the record retention period from five to three years for consistency with 40 Code of Federal Regulations (CFR) §144.51(j)(2)(ii).

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute.

“Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 305 will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the amendments reduce a current record retention requirement and make the rule easier to read. These changes are anticipated to have a minor positive economic benefit to affected facilities. In addition, the amendments are not a “major environmental rule” because they do not meet the applicability requirements listed in Texas Government Code, §2001.0225(a)(1) - (4). The amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules under to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to correct and decrease the record retention period from five years to three years in Chapter 305, Subchapter H to be consistent with 40 CFR §144.51(j)(2)(ii). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the amendments eliminate an unnecessary acronym and increase compatibility with the federal rule by reducing the record retention period. Thus, the amendments will not make the rule more stringent. As

well, the Texas Government Code exception at §2007.003(b) regarding an action reasonably taken to fulfill an obligation mandated by federal law applies to this rulemaking.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that Chapter 305 is identified in 30 TAC §281.48, Appendix E, as a rule which relates to actions subject to the Texas Coastal Management Program (CMP) and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process. However, the adopted amendments to Chapter 305 will not have direct or significant adverse effect on any Coastal Natural Resource Areas (CNRAs), nor will the rulemaking have a substantive effect on commission actions subject to the CMP because the adopted rule amendments merely update, correct, and clarify Chapter 305, and increase compatibility with the federal rules.

The commission prepared a consistency determination for the adopted rules under 31 TAC §505.22 and has found the adopted rulemaking to be consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the adopted rules include to protect, preserve, restore, and enhance the diversity, quality, functions, and values of CNRAs because §305.154, Standards, sets forth the additional conditions for injection well permits and §305.157 pertains to record retention. However, in §305.154, the adopted amendment merely deletes the use of an acronym. The adopted amendment in §305.157 merely makes commission rules consistent with federal regulations by modifying the record retention requirement from five to three years. Chapter 305 is subject to the CMP; however, the adopted amendments to Chapter 305 will not have direct or

significant adverse effect on any CNRAs, nor will the rulemaking have a substantive effect on commission actions subject to the CMP because the adopted rule amendments merely update, correct, and clarify Chapter 305, and increase compatibility with the federal rules.

#### HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed August 14, 2000. No written comments were received.

#### STATUTORY AUTHORITY

The amended sections are adopted under Texas Water Code, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105 which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and Texas Health and Safety Code, §361.024, which provides the commission authority to adopt rules and establish minimum standards of operation for the management and control of solid waste under this chapter.

**SUBCHAPTER H: ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS**

**§305.154, §305.157**

**§305.154. Standards.**

(a) In addition to other standard permit conditions listed elsewhere in this chapter, the following conditions and other applicable standards listed in Chapter 331 of this title (relating to Underground Injection Control) shall be incorporated into each permit expressly or by reference to this chapter. The commission may impose stricter standards where appropriate.

(1) Construction requirements. Section 331.62 and §331.82 of this title (relating to Construction Standards; Construction Requirements).

(2) Compliance schedule. See §305.127(3)(E) of this title (relating to Schedule of Compliance).

(3) Construction plans. Changes in construction plans shall be approved under §331.45 of this title (relating to Executive Director Approval of Construction and Completion), or, by minor modification according to §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee).

(4) Commencing operations. Commencement of injection operations before approval by the executive director of construction and completion is a violation of the permit and may be considered grounds for revocation or suspension of the permit, and for enforcement action. Except for new wells authorized by an area permit under subsection (b) of this section (relating to Standards), a new injection well may not commence injection until construction is complete, and:

(A) the permittee has submitted notice of completion of construction to the Director; and

(B) the executive director has inspected or otherwise reviewed the new injection well and finds it complies with the conditions of the permit; or

(C) the permittee has not received notice from the executive director of intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in subparagraph (A) of this paragraph, in which case prior inspection or review is waived and the permittee may commence injection. The executive director shall include in the notice a reasonable time period in which he shall inspect the well.

(D) for Class I wells, submission of the completion report required by §331.65(a)(1) of this title (relating to Monitoring Requirements) shall constitute the notice required in subparagraph (A) of this paragraph.

(5) Operating requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).

(6) Monitoring and reporting. All permits shall specify requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring. Reporting shall be no less frequent than specified in the appropriate sections of Chapter 331 of this title (relating to Underground Injection Control). Section 331.64 and §331.65 of this title (relating to Monitoring Requirements; Reporting Requirements); §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or Chapter 331, Subchapter F of this title (relating to Standards for Class III Well Production Area Development).

(7) Closure. The permittee shall notify the executive director and obtain approval before plugging an injection well. After failing to operate for a period of two years, the owner or operator shall close the well in accordance with an approved plan unless:

(A) notice is provided to the executive director; and

(B) actions and procedures are described, satisfactory to the executive director, that the owner or operator will take to ensure that the well will not endanger underground sources of

drinking water during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable, unless waived by the executive director.

(8) Corrective action requirements. Section 331.44 of this title (relating to Corrective Action Standards) and §305.152 of this title (relating to Corrective Action).

(9) Financial assurance requirements. The permittee is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells). The permittee shall show evidence of such financial responsibility to the executive director.

(10) Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Standards).

(11) Liability coverage requirements. The permittee of hazardous waste injection wells shall maintain sufficient liability coverage for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents in accordance with Chapter 37, Subchapter Q of this title.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized, and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment for all wells authorized by the permit.

(3) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(A) The permittee notifies the executive director at such time as the permit requires;

(B) The additional well satisfies the criteria in §331.7(b) of this title (relating to Permit Required) and meets the requirements specified in the permit under paragraphs (1) and (2) of this subsection; and

(C) The cumulative effects of drilling and operation of additional injection wells are considered by the executive director during evaluation of the area permit application and are acceptable to the executive director.

(4) If the executive director determines that any well constructed pursuant to paragraph (3) of this subsection does not satisfy any of the requirements of this subsection, the executive director may amend, terminate, or take enforcement action. If the executive director determines that cumulative effects are unacceptable, the permit may be amended under §305.62 of this title (relating to Amendment).

**§305.157. Record Retention.**

The permittee shall retain all records concerning the nature and composition of injected fluids until three years after completion of plugging and abandonment procedures for the well. The executive director may require a permittee to submit copies of the records at any time prior to conclusion of the retention period.